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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 9, 2018
9:00 a.m.

Before:

HON. JESSE M. FURMAN,

District Judge

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1 (In open court; trial resumed)

2 THE COURT: Good morning. Welcome back. I hope
3 everyone enjoyed their break yesterday.

4 I apologize again for the late notice on the change of
5 schedule today that we have to end a little earlier. I think,
6 unless it causes anyone problems, what I would propose is that
7 we shorten the lunch break to something more like my normal
8 trial schedule, that is to say, we'll take a mid-morning
9 ten-minute break, as we usually do, and then only a half-hour
10 break for luncheon, the theory that the trial day will be
11 ending earlier, and that way we can maximize our time.

12 Does that work for everybody?

13 If it doesn't, speak now or forever hold your peace.

14 Good. I got the plaintiffs' letter with respect to
15 the parties' agreement on certain exhibits. As far as I'm
16 concerned, those that plaintiffs plan to offer without
17 objection this morning are now in evidence, and you don't need
18 to list them. They are on the letter.

19 I'm happy to either hear argument on the other ones at
20 some point, though maybe we should defer that until after
21 today, or I'm happy to take under advisement the 401 and 403
22 objections and decide those objections in connection with my
23 ultimate ruling. Either way is fine with me.

24 MR. COLANGELO: Your Honor, I do think that we would
25 like to argue those, if necessary, but there is no reason to do

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1 it now.

2 I think it would make more sense to get to the
3 witnesses and do it at the end of the trial day or later as
4 appropriate.

5 THE COURT: Great. Excellent.

6 Are there any preliminary matters that you want to
7 take up, either side?

8 MR. HO: Your Honor, just briefly on the video
9 excerpts of the Gore and Comstock depositions. Plaintiffs are
10 ready to file a notice with the court with links to those so
11 that they are on the docket. We've been ready for about three
12 days now. We still haven't gotten confirmation from the
13 defendants as to whether or not they object to the excerpts as
14 we have prepared them.

15 THE COURT: All right. I think the time to raise any
16 objections is probably over.

17 Ms. Bailey, can they proceed?

18 MS. BAILEY: Yes, your Honor. No objections.

19 THE COURT: Great. Why don't you do that today so
20 that I can watch them over the weekend.

21 MR. HO: We will.

22 THE COURT: Excellent.

23 MR. GERSCH: Your Honor, one other matter.

24 Mr. Thompson, our first witness of the day, was going
25 to authenticate Plaintiffs' Exhibits 386 and 397, which are in

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1 conditionally. We've just been advised by defense counsel that
2 they withdraw the remainder of their objections.

3 We move Plaintiffs' Exhibits 386 and 397 in for all
4 purposes.

5 THE COURT: That's in conjunction with Mr. Thompson's
6 testimony?

7 MR. GERSCH: I was going to do it then. Given the
8 absence of objection, I thought I would move them now.

9 THE COURT: Any objection?

10 MR. COYLE: No objection.

11 THE COURT: Those are admitted.

12 (Plaintiffs' Exhibits 386 and 397 received in
13 evidence)

14 THE COURT: One question, is Mr. Thompson the first
15 witness?

16 MR. GERSCH: Yes, your Honor.

17 THE COURT: Can we proceed, or is there anything else
18 we need to take up?

19 Why don't you call Mr. Thompson to the stand, please.

20 MR. GERSCH: New York Immigration Coalition plaintiffs
21 call John Thompson as their first witness of the day.

22 THE COURT: All right. As he is coming up, let me ask
23 my question, which is I looked at the defendants' original
24 objections to Mr. Thompson's affidavit. Plaintiffs' response
25 and the defendants' response indicated that you had intended to

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1 withdraw certain paragraphs and file a corrected affidavit. I
2 don't think I ever saw one.

3 MR. GERSCH: If we didn't file it, that was an
4 oversight. We have his amended. The only change was to
5 paragraph 15, which was phrased in terms of what defendants
6 objected to as an opinion on the ultimate issue in the case,
7 and we rewrote it so it wouldn't phrase that. It is a summary
8 paragraph. It doesn't change the substance of his testimony.

9 THE COURT: All right.

10 MR. GERSCH: We are prepared to file.

11 THE COURT: Do you have a copy that I could look at
12 today?

13 MR. GERSCH: Certainly.

14 May I approach, your Honor?

15 THE COURT: You may.

16 The only change is to paragraph 15?

17 MR. GERSCH: That's correct.

18 Your Honor, I'm informed it was filed, but with the
19 fact witness declarations, it went in at that time. As long as
20 your Honor needs a copy.

21 THE COURT: Can I keep this copy?

22 MR. GERSCH: Of course.

23 THE COURT: Very good. Thank you.

24 Are you ready to proceed?

25 Just a reminder, counsel on both sides, given the

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Thompson - Direct

1 number of different lawyers, just identify yourself and spell
2 your name for the court reporter when you first pop up.

3 You may proceed.

4 MR. GERSCH: I am Mr. Gersch.

5 Good morning, Mr. Thompson. Would you state your
6 name?

7 THE COURT: Excuse me. Hold on. My deputy needs to
8 swear the witness. I apologize.

9 JOHN HUBERT THOMPSON,

10 called as a witness by the Plaintiffs,

11 having been duly sworn, testified as follows:

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

14 THE WITNESS: John Hubert Thompson, J-o-h-n,
15 H-u-b-e-r-t, T-h-o-m-p-s-o-n.

16 DIRECT EXAMINATION

17 BY MR. GERSCH:

18 Q. Mr. Thompson, you're going to be testifying on direct today
19 through your written declaration. If I could just ask you one
20 question first.

21 How are you employed up until late last year?

22 A. Up until late last year, I was employed as the executive
23 director of the Council of Professional Associations on Federal
24 Statistics.

25 Q. I'm sorry, sir. One more question.

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Thompson - Direct

1 THE COURT: Can you step a little forward and make
2 sure you speak loudly and clearly and directly into the
3 microphone so that everybody can hear you, please?

4 Thank you.

5 BY MR. GERSCH:

6 Q. Immediately before that, were you employed?

7 A. Immediately before that, I was the director of the Census
8 Bureau from August of 2013 through June of 2017.

9 Q. Thank you.

10 You have with you today your amended declaration in this
11 case?

12 A. I do.

13 Q. Does that state your views fully and accurately?

14 A. It does, with one exception.

15 Q. All right. Can you advise the court what that exception
16 is?

17 A. Yes.

18 On page 80 -- I'm sorry, on paragraph 80 -- I would like to
19 drop the last three words, American Indian Reservations.

20 Q. With that change, is your declaration true and correct?

21 A. Yes.

22 Q. All right.

23 MR. GERSCH: Your Honor, at this time, what we offer
24 is the declaration of his direct testimony, and as I think I
25 said earlier, it has been filed.

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Thompson - Cross

1 THE COURT: All right. Defendants, any objections?

2 I have your original objections. I don't know if
3 those stand.

4 MR. COYLE: We understand your Honor will take into
5 account the relevant objections when rendering your ultimate
6 ruling.

7 With that, we don't have any further objection.

8 THE COURT: Great. It is admitted without objection.

9 Any additional exhibits beyond 386 and 397 that you
10 would offer in conjunction with this?

11 MR. GERSCH: Every exhibit we might use is already
12 admitted into evidence, your Honor.

13 THE COURT: All right. Very good.

14 Cross-examination.

15 MR. COYLE: Garrett Coyle for the Justice Department.

16 CROSS-EXAMINATION

17 BY MR. COYLE:

18 Q. Good morning, Mr. Thompson. I first want to ask you about
19 Dr. John Abowd.

20 You have a high opinion of Dr. Abowd as a scientist, right?

21 A. Correct.

22 Q. You think highly of his work?

23 A. I do.

24 Q. Others in the field also think highly of his work?

25 A. Correct.

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Thompson - Cross

1 Q. Lets talk about question testing.

2 You think that proper testing procedures weren't done
3 before the citizenship question was added to the 2020 census?

4 A. That's correct.

5 Q. You say that the testing procedures that should have
6 applied are extensive and well-established?

7 A. Yes.

8 Q. Yet for questions being added to the decennial census,
9 those procedures aren't written down anywhere, are they?

10 A. There is no manual for each decennial census that must be
11 followed.

12 Q. There is no other written policy that you have seen either,
13 is there?

14 A. After the design and planning of each census, there is
15 extensive testing program that is carried out, and that is
16 accompanied by detailed procedures and specifications that are
17 prepared.

18 Q. But there is no general written policy that applies to all
19 questions that will be added to a decennial census, correct?

20 A. There is no general policy.

21 Q. The testing procedures you're talking about come primarily
22 from two examples that happened while you worked for the Census
23 Bureau?

24 A. Correct.

25 Q. The first example was a proposed change to the race and

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Thompson - Cross

1 ethnicity question for the 2000 decennial census?

2 A. Yes.

3 Q. And the second was a proposed change to the race and
4 ethnicity question for the 2020 census?

5 A. Correct.

6 Q. Both of those proposals involved changing the wording of a
7 question that was already on the decennial census, right?

8 A. The first one involved changing the wording of a question
9 that was already on the decennial census. That was the one in
10 advance of 2000.

11 The second one actually involved changing the types of
12 questions that would be asked. Instead of asking two questions
13 on Hispanic ethnicity and race, it was testing a combined
14 question.

15 Q. Here, the citizenship question already appears on the
16 American community survey?

17 A. Correct.

18 Q. It is your understanding that there is no change in the
19 wording of the citizenship question from the American community
20 survey to the decennial census?

21 A. Correct.

22 Q. I want to talk about the specific testing procedures that
23 you think should have applied.

24 Those procedures include getting input from subject matter
25 experts?

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Thompson - Cross

1 A. Yes.

2 Q. And the purpose of that is to make sure the question
3 actually gets the information it is designed to elicit?

4 A. That the subject matter experts need, yes, exactly.

5 Q. But you don't know whether before a citizenship question
6 was put on the American community survey input was gathered
7 from subject matter experts?

8 A. I believe that there was complete and thorough testing of
9 the citizenship question before it was included on the American
10 community survey.

11 Q. That applies to all the testing procedures that you have
12 talked about in your trial affidavit?

13 A. I believe so.

14 Q. Over 30 million households have answered the American
15 community survey since its inception in 2005?

16 A. I'll accept your mathematics. If you multiply the numbers.

17 Q. It is over two million a year?

18 A. Yeah, yeah.

19 Q. And it's been in existence for 13 years?

20 A. Yes.

21 Q. That includes the citizenship question?

22 A. Yes.

23 Q. Lets talk about what you think the effects of the
24 citizenship question might be.

25 You think Secretary Ross failed to consider the likelihood

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Thompson - Cross

1 that the citizenship question might lead to an undercount?

2 A. Yes.

3 THE COURT: Mr. Thompson, please keep your voice up if
4 you can so everybody can hear you.

5 THE WITNESS: I'm sorry.

6 THE COURT: It's OK. Maybe more directly into the
7 microphone will help.

8 Thank you.

9 BY MR. COYLE:

10 Q. You don't think the Census Bureau's nonresponse followup
11 procedures will be fully effective in mitigating any
12 undercount?

13 A. That's correct.

14 Q. Lets talk about those procedures.

15 Lets first talk about something called the CAPI, C-A-P-I,
16 response rate. Essentially CAPI is the Census Bureau's
17 nonresponse followup process for the American community survey,
18 right?

19 A. That's correct.

20 Q. And you rely on CAPI response rates to support your opinion
21 that nonresponse followup procedures won't be effective on the
22 decennial census?

23 A. That's part of what I relied on, yes.

24 Q. Now, the CAPI process doesn't send in-person enumerators to
25 every household that doesn't self-respond to the American

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Thompson - Cross

1 community survey, right?

2 A. It sends them to a sample of the households that didn't
3 respond.

4 Q. Whereas, on the decennial census, the Census Bureau does
5 send an in-person enumerator to every household that doesn't
6 self-respond, right?

7 A. That's correct.

8 Q. There is no marketing campaign associated with the American
9 community survey like there is with the decennial census?

10 A. That's correct.

11 Q. The decennial census nonresponse followup also uses proxy
12 responses from people like neighbors and building managers?

13 A. That's correct.

14 Q. You don't know whether proxy responses are part of the CAPI
15 process on the American community survey?

16 A. I believe they are part of the process for enumerating
17 vacant housing units. I don't believe that proxies are used to
18 collect information from occupied units.

19 Q. The decennial census nonresponse followup also uses
20 imputation to supply missing data?

21 A. That's correct.

22 Q. But the CAPI process on the ACS doesn't use imputation to
23 fill in data when a household doesn't self-respond?

24 A. So it is a unit nonresponse, is that what you're saying?

25 Q. Whole person census imputation, that is not used on the

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Thompson - Cross

1 CAPI?

2 A. That's correct.

3 Q. All right. Lets talk about administrative records next.

4 Another reason you don't think nonresponse followup
5 procedures will be effective is that administrative records are
6 more likely to exist for citizens than for noncitizen
7 households?

8 A. That's correct.

9 Q. But if there are no administrative records for a particular
10 household, that household isn't just omitted from the count,
11 right?

12 A. On the decennial census?

13 Q. On the decennial census?

14 A. That is exactly correct. They try to enumerate the
15 households for which they don't have high-quality
16 administrative records.

17 Q. They use other nonresponse followup procedures to get data
18 and count that household?

19 A. Yes.

20 Q. All right. Lets finally talk about imputation.

21 Another reason you don't think the nonresponse
22 followup procedures will be effective is that the imputation
23 process basically repeats any errors in data collected from
24 self-responses?

25 A. Essentially, that is correct.

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Thompson - Cross

1 Q. The Census Bureau uses a method of imputation called hot
2 deck imputation?

3 A. They certainly used it in 2000 and 2010.

4 Q. You agree that hot deck imputation is an accepted and
5 reliable statistical method for supplying missing data?

6 A. I do.

7 Q. It was used like you said in 2010?

8 A. Yes.

9 Q. It was used in 2000?

10 A. Yes.

11 Q. 1990?

12 A. Yes.

13 Q. 1980?

14 A. You're testing my memory, but I believe that it was used in
15 1980.

16 MR. COYLE: No further questions.

17 THE COURT: Redirect?

18 MR. GERSCH: Your Honor, if I could just have a
19 moment, I think we'll be able to cut this down in terms of
20 time.

21 (Pause)

22 BY MR. GERSCH:

23 Q. Mr. Thompson, lets start with the last questions you were
24 requested about imputation.

25 My question to you is this: If imputation is a reliable

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Thompson - Cross

1 statistical technique, does that mean that there will be no
2 problems using it on the census in terms of addressing lower
3 response rates resulting from asking the citizenship question?

4 A. I think imputation is a fine technique. However,
5 imputation is not going to correct for undercounts or
6 overcounts in the census. So, for example, there were
7 significant undercounts in the 1990 census. They were reduced
8 somewhat for the 2000, 2010 census. All the census uses
9 imputation and imputation didn't fix the undercount.

10 Q. And you believe that imputation can fix problems stemming
11 from a lower self-response rate from adding a citizenship
12 question on the 2020 census?

13 A. No, no.

14 THE COURT: Mr. Gersch, watch the form of your
15 question, please.

16 MR. GERSCH: I'm sorry, I didn't catch your Honor.

17 THE COURT: Watch the form of your question.

18 MR. GERSCH: Certainly, your Honor.

19 BY MR. GERSCH:

20 Q. You were also asked some questions about NRFU.

21 Do you recall those questions?

22 A. Yes, I do.

23 Q. All right. Do you believe that NRFU will successfully
24 address problems stemming from the declining self-response as a
25 result of adding a citizenship question?

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Thompson - Cross

1 MR. COYLE: Objection, leading.

2 THE COURT: Sustained.

3 Q. Do you have an opinion as to whether NRFU will address
4 questions stemming from lower self-response rate that may
5 result from the addition of a citizenship question?

6 A. I do.

7 Q. Would you explain to the court what that opinion is?

8 A. Thank you.

9 So my opinion is that NRFU will not overcome the barriers
10 presented by asking the citizenship question to overcome the
11 lack of a potential lack of trust and the lack of
12 participation. The increased rate of proxies that will result
13 in the nonresponse followup and that significant undercounts
14 would not be corrected by NRFU. Nonresponse followup. I'm
15 sorry.

16 Q. Mr. Thompson, we've heard testimony that NRFU consists of
17 several stages, one stage and you were asked about this in
18 connection with the CAPI. One stage is having enumerators go
19 to people's homes.

20 Do you have an opinion as to whether that would be
21 effective in addressing declining self-response that may result
22 from asking the citizenship question?

23 A. So I do have an opinion.

24 Q. What is that opinion?

25 A. So my opinion is that the materials I've looked at in

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Thompson - Cross

1 preparation for this testimony indicate that the addition of
2 the citizenship question will not only lower the self-response
3 to the census, but will also increase the levels of proxy
4 enumerations, which means the nonresponse followup enumerators
5 are going to be facing a population that is less cooperative
6 than it would be with the citizenship question.

7 Q. In reaching your opinions, did you rely in part on the
8 Brown paper from the census department?

9 A. I did.

10 Q. Could we put up Exhibit 662? Plaintiffs' Exhibit 662.

11 I'm sorry. I gave you the wrong number. 162.

12 All right. That's the first page.

13 You're familiar with this article, is that right?

14 A. Yes.

15 Q. All right. Lets turn to page 41, 41 of 77.

16 If we can look under paragraph seven, in the middle there,
17 is there a finding that you called my attention to?

18 A. There is.

19 Q. Could you read that for the court?

20 A. Yes.

21 It says households deciding not to self-respond
22 because of the citizenship question are likely to refuse to
23 cooperate with enumerators coming to their door in NRFU,
24 resulting in the use of neighbors as proxy respondents on their
25 behalf.

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Thompson - Cross

1 Q. All right. What's the problem with having proxy
2 respondents try and fill in gaps from persons who don't respond
3 or may not respond as a result of the addition of a citizenship
4 question?

5 A. So I think there are situations where proxy respondents may
6 not understand the true nature of a household that they are not
7 a member of.

8 For example, a proxy could think that there were two people
9 living in a household, and in actuality, there would be four,
10 which would be two people and a young mother and a child who
11 has a tenuous attachment to the household but still uses that
12 as her primary residence. The proxy could omit that young
13 mother and child.

14 Q. And is that something that can ever be cured in the
15 imputation process?

16 MR. COYLE: Objection, leading.

17 THE COURT: Overruled.

18 Q. You can answer.

19 A. Thank you.

20 No.

21 Q. Why is that?

22 A. That's because the imputation process will take into
23 account that the census proxy reported two people and it won't
24 add the missing people.

25 MR. GERSCH: Thank you, Mr. Thompson.

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Thompson - Cross

1 Your Honor, we have nothing further.

2 THE COURT: All right. I have one question myself,
3 and then if counsel wish to followup, you may do so.

4 Earlier, Mr. Coyle asked you some questions about the
5 absence of any written guidance with respect to the decennial
6 census.

7 You testified that there was no manual for the census
8 specifically, is that correct?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: All right. In your direct testimony, your
11 affidavit, I think you had cited some -- am I correct that --
12 well, let me ask you more generally.

13 Is there guidance that applies to the conduct or
14 testing of surveys that are conducted by the government more
15 generally?

16 THE WITNESS: There are a number of standards that
17 exist for conducting government surveys, your Honor.

18 THE COURT: Do those apply to the census?

19 THE WITNESS: Many of them do.

20 THE COURT: All right. So when you testified earlier
21 that there was no manual or guideline specific to the census,
22 were you testifying that there are no standards that applied to
23 the census, or simply that there is nothing specific to the
24 census alone?

25 THE WITNESS: So what I was contrasting with, your

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Thompson - Cross

1 Honor, is that if you look at the American community survey,
2 there is very detailed process that is outlined for how you
3 would go about adding a question or changing a question.

4 For each decennial census, the process starts by
5 reviewing the previous census, getting stakeholder input as to
6 the effectiveness of the census, new issues that might be
7 emerging.

8 At that point, a planning process standards to prepare
9 for the next census. Detailed procedures for testing and
10 evaluation are the written out to take into account the
11 specific issues that must be addressed to have a successful
12 census the next go around.

13 But so there are very detailed written procedures that
14 are prepared for the census, but they are prepared based on a
15 review of the previous census in conjunction with stakeholder
16 input.

17 THE COURT: Are you familiar with, for example, the
18 Office of Management and Budget Standards and Guidelines for
19 Statistical Surveys?

20 THE WITNESS: I am.

21 THE COURT: Do the standards that are set forth in
22 there and the guidelines set forth in there, do they apply to
23 the creation of and conduct of the census?

24 THE WITNESS: They certainly do.

25 THE COURT: What about the Census Bureau's statistical

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Thompson - Cross

1 quality standards, what application, if any, do those have to
2 the census?

3 THE WITNESS: They have applications for the 2020
4 census. For the 2000 census that I was managing, those
5 standards did not exist at that time.

6 THE COURT: When did those standards come into effect,
7 do you know?

8 THE WITNESS: I believe they were finally finished in
9 2013.

10 THE COURT: All right. Very good.
11 Counsel, any followup from either side?
12 Mr. Gersch, since you're standing, I'll start with
13 you.

14 MR. GERSCH: No, your Honor.

15 THE COURT: Mr. Coyle?

16 MR. COYLE: No, your Honor.

17 THE COURT: Mr. Thompson, thank you very much. You
18 may step down and you're excused.

19 THE WITNESS: Thank you, your Honor.

20 THE COURT: Have a pleasant day.

21 (Witness excused)

22 MR. COLANGELO: Your Honor, if we can have ten seconds
23 to rearrange the chairs here?

24 THE COURT: Sure.

25 MS. FIDLER: My name is Danielle Fidler, representing

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Barreto - Direct

1 plaintiffs State of New York.

2 Plaintiffs call Dr. Matthew A. Barreto to the stand.

3 MATTHEW ALEJANDRO BARRETO,

4 called as a witness by the Plaintiffs,

5 having been duly sworn, testified as follows:

6 THE COURT: Please be seated. If you could just state
7 and spell your name for the court reporter, please.

8 THE WITNESS: Yes. My name is Matthew Alejandro
9 Barreto, M-a-t-t-h-e-w, A-l-e-j-a-n-d-r-o-, B-a-r-r-e-t-o.

10 THE COURT: Ms. Fidler, you may proceed.

11 MS. FIDLER: Thank you, your Honor.

12 DIRECT EXAMINATION

13 BY MS. FIDLER:

14 Q. Dr. Barreto, where are you currently employed?

15 A. I am currently a professor of political science and Chicano
16 studies at the University of California, Los Angeles.

17 Q. How long have you been a professor at UCLA?

18 A. About coming on four years. I started in January of 2015.

19 Q. Did you have any faculty appointments before you joined
20 UCLA?

21 A. Yes, I did.

22 Q. Where were those?

23 A. I was a professor of political science at the University of
24 Washington in Seattle for about nine and a half years.

25 Q. John, could you please pull up Plaintiffs' Exhibit 287.

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Barreto - Direct

1 Please turn to appendix C.

2 Dr. Barreto, could you please identify this document?

3 A. Yes. This is my c.v., which I included as an appendix in
4 my initial report.

5 Q. Is this a current copy of your c.v.?

6 A. Yes. This was a current copy as of, I believe,
7 September 7, when I submitted it, and yes, it remains current.

8 Q. Do pages 65 through 67 of your c.v. reflect a current list
9 of your peer-reviewed publications?

10 A. Yes. That looks correct.

11 Q. What are the primary subject areas in which you have
12 published?

13 A. Generally in the area of public opinion, survey
14 methodology, and with a specific focus on racial and ethnic
15 populations. It is mostly on the Latino and immigrant
16 population.

17 Q. Can you identify some of the journals in which your
18 articles have been published?

19 A. I've published in a number of journals. Often depends on
20 the topic of where you are looking for, the focus of the
21 journal, but some of these journals include Sociological
22 Methods & Research, the American Political Science Review,
23 Public Opinion Quarterly, and journals such as this.

24 Q. Dr. Barreto, pages 69 and 70 list a number of research
25 awards and fellowships you have received, is that correct?

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1 A. Yes, that's correct.

2 Q. Describe what it means to receive a research award or
3 fellowship.

4 A. These are generally competitive grants or funding
5 applications, whereas scholars at research universities were
6 expected to support and bolster our research by receiving
7 external grants.

8 So these are a number of the external grants that I
9 have applied for and been awarded.

10 Q. Turning to page 73, what are some of the subjects that
11 you've taught that relate to the work you've done in this case?

12 A. I regularly teach classes on public opinion and racial and
13 ethnic politics, the politics of the Latino and immigrant
14 community, as well as survey methodology, statistical analysis,
15 and research design.

16 Q. Do you ever teach courses about census methodology?

17 A. I would say not the title of the course, but in many of
18 the survey courses, as well as courses on racial and ethnic
19 populations, I regularly rely and use census data and discuss
20 census methodology in my courses, yes.

21 Q. Turning now to the various board memberships you have
22 listed on this page.

23 What is Latino Decisions?

24 A. Latino Decisions is a polling and research group that I
25 co-founded about ten years ago or so, and we conduct public

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1 opinion polls and focus groups primarily of the Latino
2 community, but also sometimes of the general public to have
3 comparison samples.

4 Q. Could you describe what your work for the American National
5 Election Study entails?

6 A. Sure.

7 The American National Election Study is one of the
8 longest standing public opinion surveys of the American
9 electorate. It has been run continuously in every presidential
10 cycle since, I believe, going back to 1956 at the University of
11 Michigan and Stanford.

12 In 2008, one of the grants we were talking about
13 previously, I was awarded a grant for the National Science
14 Foundation to conduct the first ever Hispanic over-sample of
15 the American National Election Study and Spanish translation.

16 Prior to that year, 2008, there had not been large enough
17 samples of Latinos in the dataset to analyze independently, and
18 so as a result of that project, and the implementation of the
19 Latino sample in 2008, I was then invited to join the board of
20 advisors.

21 So this is a group of about 25 or so academics who
22 meet about four times a year and provide input and guidance on
23 the ANES.

24 Q. Could you explain what the collaborative projects state of
25 changes and your role with it?

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1 A. Sure.

2 This is a project that is run out of a bipartisan
3 group of think tanks in Washington, DC, the Center for American
4 Progress, the American Enterprise Institute, and Brookings.
5 And they have collaborated on an analysis of census data, both
6 historic census data, but more so it is related to forecasts
7 and projections into the future and how different states are
8 seeing their populations change.

9 And they have an advisory board similarly of about
10 25 that includes a combination of academics as well as
11 practitioners who work in the area of population studies and
12 elections. And we meet in Washington, DC, about three or four
13 times a year. The advisory board provides feedback. They
14 usually take turns hosting the meeting at either the Center for
15 American Progress or the American Enterprise Institute. And we
16 talk to not just the people doing analysis of the data, but
17 oftentimes practitioners. People working in politics come and
18 listen to these presentations.

19 Q. What did you do for the State of California citizenship
20 predicting districting committee?

21 A. In the 2011 predicting districting cycle, California moved
22 from a legislative predicting districting process to their
23 first ever independent citizens commission, who were going to
24 be in charge of predicting districting. I had previously done
25 some voting rights work related to predicting districting, and

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1 so I was identified as a possible expert consultant.

2 I interviewed and became the expert consultant for the
3 State of California, and my role was to review and advise the
4 maps that the citizens commission was proposing for the state
5 legislature, as well as the congress, the congressional
6 delegation from California, and to advise them of any potential
7 Section 2 or Section 5 voting rights challenges that they may
8 be facing.

9 So I did a lot of statistical analysis of voting
10 records, population data for them. And I stayed on for about
11 two years through the end of any lawsuits challenging the maps.
12 Q. Dr. Barreto, we are going to talk quite a bit today about
13 survey methodology, including survey design and implementation.

14 Could you please describe your experience in the area
15 of survey design and implementation?

16 A. Sure.

17 This is an area or topic I've been working on since
18 about 1999, when I was a researcher at the Tomas Rivera Policy
19 Institute. This was a think tank at the Claremont Colleges at
20 the time in Southern California, where I came on and worked on
21 survey design and implementation and survey methodology.

22 From there, it was a central component of my Ph.D. studies
23 at the University of California at Irvine, and has continued to
24 be type of data that I rely on regularly for my academic
25 publications and my research that I do.

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1 Survey design and methodology is, I would say, my primary
2 area of methodological focus.

3 Q. Turning to page 72 of your c.v., I notice that you have
4 provided expert deposition or testimony in the last four years.

5 Did your work in those cases involve conducting surveys?

6 A. Yes.

7 Q. Which ones?

8 A. Well, in two of the cases, I specifically was asked to
9 implement a survey, and in one of the cases, I was asked to
10 evaluate another survey. So the two cases at the bottom, North
11 Dakota and Texas, in those cases, I conducted in collaboration
12 with Professor Gabriel Sanchez at the University of New Mexico.
13 He and I implemented large statewide public opinion surveys of
14 eligible voters in either North Dakota or Texas, and they also
15 both included an over-sample of minority voters to evaluate the
16 impact of the voter ID laws that were being passed in each
17 state.

18 The case directly above that, Kansas, I did not implement
19 an arrange survey, but I was asked to evaluate the survey
20 methodology for the defense, and so that case also involved
21 survey methodology.

22 Q. Are these the only cases in which you've performed survey
23 work as an expert witness?

24 A. No, there are others.

25 Q. Were you qualified by those courts to testify as an expert

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1 in those cases?

2 A. Yes.

3 In all of these cases here, as well as the ones that
4 were older than four years, I was admitted and qualified as an
5 expert to testify on survey methodology.

6 Q. Were the surveys you did in those cases given weight by the
7 court?

8 A. Yes.

9 In the two surveys specifically that are listed here,
10 the court relied on the survey evidence in making their final
11 decision in favor of the plaintiffs.

12 In the previous cases that I worked on, the court has also
13 relied on my survey data and given it credibility or weight in
14 making the decision -- in their decision for plaintiffs.

15 The only exception was in a state court in Pennsylvania,
16 which was also a voter ID trial, the initial trial court did
17 not, even though I was qualified as an expert, they did in not
18 give the survey weight in making their initial decision.

19 But it was eventually on reconsideration after appeal,
20 the judge did ultimately in the final decision give it weight,
21 but that one was more complex than the others.

22 Q. Dr. Barreto, what do you consider to be your areas of
23 expertise as it relates to the work you've performed in this
24 case?

25 A. I would certainly say survey methodology and design, public

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1 opinion analysis, racial and ethnic communities, and Latinos
2 and immigrants in particular, would probably be the broad
3 areas. As well as demography, population studies, and
4 statistical analysis.

5 Q. Dr. Barreto, you've been retained on behalf of the
6 plaintiffs to serve as an expert witness in this case, correct?

7 A. Yes, that is correct.

8 Q. What were the tasks you were retained to perform?

9 A. Generally, the tasks included an evaluation of the addition
10 of the citizenship question on the 2020 census, to evaluate how
11 this might affect the initial response rate, as well as carried
12 through the entire census, how it might affect followup,
13 imputation, and ultimately the quality of the data that would
14 be gathered in 2020.

15 Q. Could you briefly summarize how you conducted your
16 evaluation?

17 A. Yes.

18 In conducting my evaluation, I relied on three main
19 components. The first was a literature review of the published
20 academic studies, as well as the published self-reports by the
21 Census Bureau and the government. These were varied on topics,
22 but mostly related to survey methodology and implementation of
23 the census.

24 The second was the implementation of an original survey
25 that I conducted especially for this case in evaluating how

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1 people would respond.

2 Then the third was just my years of experience as a
3 professional in the survey methodology field and in surveying
4 Hispanic and Latino communities specifically.

5 Q. As the case progressed, were you asked to perform any
6 additional tasks?

7 A. Yes.

8 Q. What were those?

9 A. Starting, of course, I submitted this report we are
10 discussing right now, the September 7 report. But as the case
11 progressed, I was asked to review and evaluate any additional
12 tables or data that came forward from the defense, including
13 the disclosure report of Dr. Abowd, as well as additional
14 tables and information that was produced.

15 Q. Dr. Barreto, what are the rates you're charging for your
16 work in this case?

17 A. \$300 per hour.

18 MS. FIDLER: Your Honor, at this time, I tender
19 Dr. Matthew Barreto as an expert in survey methodology, public
20 opinion polling, and racial and ethnic politics.

21 THE COURT: Racial, what was the last bit?

22 MS. FIDLER: Racial and ethnic politics.

23 THE COURT: Any objection?

24 MS. BAILEY: No objection, your Honor.

25 THE COURT: All right. He is so certified.

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1 BY MS. FIDLER:

2 Q. Dr. Barreto, have you come to any key findings about the
3 citizenship question?

4 A. Yes.

5 Q. And to help guide our discussion this morning, have you
6 created a slide summarizing those opinions?

7 A. Yes, I have.

8 Q. Please call Plaintiffs' Demonstrative Exhibit 23.

9 What are those key opinions?

10 A. Well, summarized here, I've attempted to scale my report
11 down into three bullet points. Of course, there is much more
12 in there.

13 But the first is that in conducting my literature review
14 and evaluating the field in general, it was quite clear to me
15 that the social science research, as well as the self-published
16 reports by the census, established that the citizenship
17 question will reduce self-response, and this will ultimately
18 harm the accuracy and the quality of the data in the census.

19 The second was that the survey that I implemented myself,
20 my original new data that was collected, this confirms that the
21 addition of the citizenship question will reduce self-response
22 and very clearly establishes that it will exacerbate the net
23 differential undercount in particular of the Latino and
24 immigrant community.

25 And then finally, my evaluation uncovered that imputation

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1 will not be successful in mitigating the net differential
2 undercount that will ultimately result in 2020, with the
3 addition of a citizenship question.

4 Q. Dr. Barreto, are you offering an opinion on whether there
5 will be a net undercount as a result of the citizenship
6 question?

7 A. Yes.

8 Q. What is that opinion?

9 A. My opinion is that the addition of the citizenship question
10 will lead to a net differential undercount that will, in
11 particular, impact Latino and immigrant communities
12 substantially in 2020.

13 Q. Lets talk about your first conclusion.

14 What do you mean when you say that the social science
15 establishes your conclusion?

16 A. This is based on my review of the existing literature,
17 meaning research articles that have been published on the topic
18 of survey methodology, on the topic of sensitive questions, on
19 the topic of response rates.

20 So that I classify as the social science research, but I
21 also include in there social science research approaches that
22 were self-published by the census or government bureaus, in
23 which they also use similar methodologies in coming to the same
24 conclusions.

25 So the general finding in the literature is that the

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1 addition of a sensitive question such as this will erode trust
2 and will lead to lower self-response rates.

3 Q. Why did you conduct a literature review?

4 A. This is always an important first starting point in
5 understanding a project like this. The first thing that I like
6 to do is make sure that we have considered the other research
7 studies that have been conducted in this field to understand
8 what they say, and it can help us understand the types of
9 questions that we might want to include in the survey.

10 So a literature is a very common first starting point,
11 and in this case, I felt it was very important to shed light on
12 this topic.

13 Q. Did you also look into respond response followup as part of
14 your review?

15 A. Yes.

16 The literature review, I would say, started with
17 looking at survey methodology and response rates as a starting
18 point, but the literature review included aspects of followup,
19 nonresponse followup specifically, as well as imputation.

20 Q. How did you decide what to review?

21 A. Well, much of the literature that is in my reference
22 section were authors and topics, if not specific papers, that I
23 was already familiar with from my other research studies.

24 As I mentioned before, it is a topic that I regularly
25 publish on, and so that was helpful because I had a good

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1 starting point knowing what some of the major research studies
2 were. But from there, we continued to expand, look at adjacent
3 articles, look at the references of the articles we read, and
4 conduct additional searches in the academic databases to find
5 these relevant pieces.

6 Q. Approximately how many sources did you consider as part of
7 your review?

8 A. I would say there is well over 50, maybe 70 or so, and
9 those are all listed in my report.

10 Q. Can we please return to Plaintiffs' Exhibit 287 and to the
11 first page.

12 Dr. Barreto, what is this document?

13 A. This is my expert report of September 7.

14 Q. Can we please go to page 50.

15 Do you recognize the page I've pulled up?

16 A. Yes.

17 Q. What is it?

18 A. This is the references of my initial report. These were
19 the references that I considered in this initial opinion.

20 Q. Does the reference list continue for several pages?

21 A. Yeah, about four pages or so, maybe.

22 Q. Can we show him the next three pages, too. Thank you,
23 John.

24 Does this list of references include journal articles,
25 research papers, and books that political scientists regularly

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1 rely on?

2 A. Yes.

3 I would say not just political scientists, though,
4 sociologists, demographers, and other people looking at
5 population studies and survey methodology.

6 Q. John, can we please pull up Plaintiffs' Exhibit 288 and
7 show me the first page.

8 Dr. Barreto, what is this document?

9 A. This is the expert rebuttal report that I filed a couple
10 weeks later in response to Dr. Abowd's disclosure.

11 Q. Can we please take a look at pages 20 and 21 of this
12 exhibit.

13 Dr. Barreto, is this the list of references you considered
14 in preparing your expert report?

15 A. This --

16 Q. Your rebuttal report. I'm sorry.

17 A. Yes.

18 This is the additional list of about 15 or so
19 references that I relied on in the rebuttal report.

20 Q. Does this list of references also include journal articles,
21 research papers, and books that political scientists regularly
22 rely on?

23 A. Yes.

24 MS. FIDLER: Your Honor, the references on these two
25 reference lists correspond to the exhibits on plaintiffs'

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1 exhibit list at Plaintiffs' Exhibit 389 and 420 to 478, not
2 including 451, which was withdrawn.

3 Seven of these exhibits have already been admitted.
4 Defendants have no objection to the admission of Exhibits 429,
5 430, 431, and 463.

6 For the remaining exhibits in this range, I would like
7 to move them in at this time for Rule 703 reliance purposes, to
8 show the bases for Dr. Barreto's expert opinions in this case,
9 and defendants have advised that they will not object to
10 admitting these documents for reliance purposes under 703.

11 THE COURT: They will not?

12 MS. FIDLER: They will not object for these purposes.

13 THE COURT: Let me confirm film that.

14 MS. BAILEY: We will not object to their admission for
15 703 purposes.

16 THE COURT: They are admitted for 703 purposes.

17 Thank you.

18 (Plaintiffs' Exhibits 429, 430, 431, and 463 received
19 in evidence)

20 MS. FIDLER: Thank you.

21 BY MS. FIDLER:

22 Q. We can go back to the summary slide.

23 Continuing with your first opinion that social science
24 research establishes that the addition of a citizenship
25 question will reduce self-response and harm the accuracy of the

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1 census.

2 Have you prepared a slide regarding the factors
3 affecting survey participation and accuracy?

4 A. Yes, I have.

5 Q. Can we please call PDX 24.

6 Is this that slide?

7 A. Yes.

8 Q. What are the main factors that impact participation in an
9 accuracy of a survey?

10 A. As I outline here, the three factors are the trust that the
11 respondent has with the survey administrator, that includes
12 both the actual person perhaps administering the survey, as
13 well as the agency or organization overseeing the survey. That
14 is definitely the starting point and the most important way to
15 get off to a good start is trust.

16 The second factor that I uncovered was sensitivity of
17 questions. What types of questions are you asking the public
18 can ultimately impact whether or not people will agree to
19 participate in your study.

20 Finally, what we call the macro environment, which is the
21 context or the climate, and here I refer to in my report the
22 social and political climate or the setting in which the survey
23 is being administered to the public.

24 Q. Lets talk about trust first.

25 How does trust impact survey participation and accuracy?

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1 A. Well, it is really the most important starting point, and
2 this is a consistent finding in all of the research that I
3 reviewed in both the academic publications and the census
4 reports, that the public has to trust the survey taker, that
5 the responses that they are going to be giving them will not
6 come back to harm them in any way, that there is no risk, that
7 their participation is not putting them in any jeopardy of
8 anything.

9 So if a respondent does not trust the survey taker, if they
10 think they are being taken advantage of, if they think they are
11 wasting their time, if they think they're trying to harm them,
12 if you don't have that trust, then the respondent is not going
13 to want to participate in the survey and, in fact, will not
14 participate in the survey.

15 So the literature is quite clear on this point that you
16 have to have trust, a trusted respondent, in order for the
17 survey to be successful.

18 Q. Can the design of the survey itself influence trust one way
19 or the other?

20 A. Certainly.

21 The design of the survey in terms of the way it is
22 implemented, the types of questions that you're deciding to
23 ask, will definitely impact the trust of the respondent. The
24 respondent is potentially trusting or untrusting of the survey
25 organization in general, but then they are also going to be

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1 looking at the specifics of the types of questions and the way
2 that the survey is being administered.

3 Q. What role does trust play in accuracy?

4 A. Well, it plays two roles. The first is if respondents are
5 so mistrusting, they may not participate at all. They may drop
6 off their response rate, and if that is the case, then you
7 don't have an accurate sample. So whatever conclusions you are
8 trying to draw will be missing some important pieces of
9 information, some respondents.

10 The second is that if the respondents don't trust the
11 survey administrator or organization, they may not give
12 truthful answers. And so it can affect both the participation
13 rates, which are crucial, but it can also affect the quality of
14 the data of those ultimately participating.

15 Q. What role does anonymity play?

16 A. For most surveys, anonymity is an extremely important
17 starting point in order to gain trust, and it is related to
18 a concept that I review of confidentiality, of perceived
19 confidentiality.

20 The respondent needs to be assured that when we
21 implement a survey, when anyone implements a survey, that they
22 can give their full, honest, and trusting answers. They don't
23 want their information being revealed, perhaps circulated
24 somewhere that could harm them, put on social media, their boss
25 might find out something they said.

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1 So anonymity is a very important starting point. When you
2 have anonymity, it is much easier to guarantee confidence and
3 trust from the respondent.

4 Q. How does that intersect with confidentiality as a
5 principle?

6 A. So confidentiality is directly related to this. These are
7 all sort of all interlocking, trust and confidentiality.

8 Ultimately, what the respondent or the participant in the
9 survey has to feel, what they have to perceive, is that when I
10 ask them questions, that I'm going to keep their answers
11 private and secure, that I am not going to link their answers
12 to any sort of other public information and share them.

13 They have to have that confidence in me as the survey
14 administrator. If they do, they will participate and they will
15 give honest and truthful answers, and so that perception of
16 confidentiality, that your information is secure, that it won't
17 be used against you, is the first starting point that you have
18 to have if you want to implement an accurate study.

19 Q. Is trust an issue that influences census participation?

20 A. Definitely.

21 Q. How so?

22 A. Well, the census is an official government survey. It is
23 done on behalf of the federal government by the Census Bureau,
24 and the public has to trust that the federal government is
25 carrying out their job faithfully and using the information for

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1 these purposes.

2 If people have any perceptions of mistrust related to
3 the government, they will be less likely to participate, and
4 this has been a topic of considerable research, both in the
5 academic social science research, but actually more so, this
6 topic of trust in the census, by the Census Bureau and
7 government reports themselves, regularly assessing how they can
8 improve and work on that issue.

9 Q. How do the factors of anonymity and confidentiality play
10 out in the census?

11 A. Well, the census starts out by forfeiting that anonymity.
12 So it starts out with a really high bar in terms of trust and
13 confidence, because the census is asking you not just about
14 you. Normally when we implement a survey, we are mostly just
15 asking you questions about yourself.

16 The census is even a higher threshold. It is asking
17 you to list your name and the name of every household member
18 and to put it down on a piece of paper, the Internet, to
19 transmit that information to the government, along with your
20 address, your age, and other pieces of information.

21 So at the start, the public understands that their
22 anonymity is not there, that they are revealing what they call
23 personal identifying information, PII. And so once that PII,
24 personal identifying information, is being collected, the
25 survey is no longer anonymous, and that raises the stakes of

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1 confidence and trust in order to complete a successful
2 response.

3 Q. Is trust particularly important to the citizenship
4 question?

5 A. There is no question that that new question that is being
6 proposed is one that previous research has documented as
7 creating the most issues related to trust.

8 It is well documented that questions related to
9 citizenship are ones that many in the Latino and immigrant
10 community have trust issues with.

11 (Continued on next page)

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1 BY MS. FIDLER:

2 Q. Are there legal requirements for confidentiality with the
3 census?

4 A. Yes.

5 Q. And how does that factor into the issue of citizenship?

6 A. Well, the Census Bureau requires that the answers, that the
7 information that they would receive to be kept, held
8 confidential and only used for purposes of count. The problem
9 is that the public may not fully know, understand, or believe
10 these rules and procedures by the Census Bureau. What the
11 public knows is that they're being asked to fill out their
12 personal information, perhaps including citizenship status, and
13 to send that information to the federal government. And so,
14 while the census does have rules and procedures for that,
15 what's really important, from the perspective of implementing a
16 successful survey, is the perception of the general public when
17 it relates to trust and confidentiality and privacy.

18 Q. Let's turn to the second bullet here. What is a sensitive
19 question?

20 A. Well, unfortunately, there's no exact rule book or playbook
21 on what sensitive questions are. It depends on the population
22 and whether or not the question makes the population feel
23 vulnerable or at risk. So we can certainly come up with types
24 of questions that might be sensitive, but it's generally the
25 type of question that is -- that the respondent feels puts them

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1 at some sort of risk or harm or is too personal and private.

2 Q. Can you give an example of a sensitive question?

3 A. So, one of the examples that I use, in my literature review
4 that I uncovered, is from a well documented and well-known
5 study, so much so that it's often used in teaching this topic
6 of sensitive questions in survey methodology courses, and that
7 is that if you had a list of -- a group of high school students
8 and started to ask them questions about drug use, illegal drug
9 use, that might be a sensitive question that they may not be
10 comfortable answering, and the sensitive questions are ones
11 that vary from different populations. And so, we have to
12 understand what is the risk or vulnerability of that
13 population, and how do they perceive their answer to that
14 question; could it put them in harm's way or not? And so the
15 sensitive questions often interlock or intertwine with the
16 third bullet point of the climate, the setting in which they're
17 being asked.

18 Q. Are trust and sensitivity issues the same across all
19 demographics?

20 A. No. They do vary.

21 Q. How so?

22 A. Well, the trust and sensitivity are based on your
23 perception as a respondent on whether that specific question is
24 bringing any risk to you. And so, in the case of the example
25 that I gave, if you were a high school student that had never

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1 used drugs, had never considered using drugs, would never do
2 that, that question wouldn't feel sensitive to you. You would
3 think I can just say no and it doesn't put me at any harm. But
4 that same question could create intense anxiety and stress and
5 trust issues with other students who may fear that, by
6 answering the question, their principal or their parents or law
7 enforcement might learn of their answer. And so, the issues of
8 trust and sensitivity vary by how the public perceives that
9 question personally impacting them or their family.

10 Q. Is the citizenship question a sensitive question?

11 A. In my opinion, it is a sensitive question for those
12 communities who are adjacent to or part of the immigrant
13 community.

14 Q. Is one of the sources you reviewed a GAO report on the
15 subject of census and sensitive questions?

16 A. Yes, I recall reviewing that.

17 MS. FIDLER: Let's call up Plaintiff's Exhibit 462.

18 THE COURT: While we do that, could you explain what
19 you mean by adjacent to the immigrant community? What does
20 that mean?

21 THE WITNESS: Yeah. So, we sort of divide up
22 populations as either being directly in the immigrant
23 community, and that might be immigrants or the children of
24 immigrants, and I usually refer to those as the immigrant
25 community, both the parents and the U.S.-born children. But

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1 then we also have a lot of populations that work directly with,
2 rely on, are impacted by, and so there I use the word
3 "adjacent," which could mean proximately adjacent but also just
4 through personal relationships and connections.

5 THE COURT: Thank you.

6 BY MS. FIDLER:

7 Q. Dr. Barreto, what is this document?

8 A. This is a GAO report, I believe, evaluating and assessing
9 the lessons learned in the 2000 decennial census, specifically
10 about the count and trust issues related to Latino immigrants
11 in the 2000 census.

12 Q. Dr. Barreto, can you explain how this report supports your
13 conclusions?

14 A. Yes. As a previous witness was explaining, at the end of
15 each census, there's an extensive postcensus evaluation of what
16 worked, what didn't work, areas for improvement. And so, I
17 reviewed reports, such as this one about the 2000 census, as
18 well as the reports about the 1990 census and the 2010 census
19 that evaluated how the census was implemented and whether it
20 was successful, and -- in Latino and immigrant communities.

21 This particular report was about the 2000 census and noted
22 extensive challenges in getting an accurate self-response
23 because of trust issues in many Latino and immigrant
24 communities, and this report noted that that continued through
25 the nonresponse follow-up process and ultimately led to an

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1 undercount of some Latino and immigrant households.

2 Q. Dr. Barreto, has the Census Bureau conducted research you
3 relied on studying the effects of trust in minority
4 communities?

5 A. Yes, many of these studies that are published by government
6 agencies, many of these studies are specifically implemented or
7 commissioned by the Census Bureau and implemented by census
8 research staff in evaluating those specific issues of trust in
9 the Latino and immigrant community.

10 Q. Any particular ones that you relied on?

11 A. Yes. There was two studies in particular by Dr. Manuel de
12 la Puente in which he conducted an evaluation of the 1990 and
13 the 2000 census, and these studies -- in his capacity as a
14 census researcher. These studies both pointed to very clear
15 evidence of trust being a major issue in Latino and immigrant
16 communities, and that was something that the census needed to
17 work on. And he went so far in some of these as to provide
18 recommendations on how they could do better.

19 MS. FIDLER: Let's call up Plaintiffs' Exhibit 430.

20 Q. Could you identify this document?

21 A. Yes. This is one of the studies I was just referring to by
22 Dr. de la Puente in which he went in after the census was over
23 and went back and did an ethnographic study, went in and talked
24 to people and tried to understand why the census had had
25 challenges.

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1 Q. And what did his work show?

2 A. Well, what he found was that there continued to be
3 undercounts in Latino and immigrant communities in the census,
4 and that was, in his opinion and based on his research, the
5 result of a lack of trust and confidence in Latino and
6 immigrant communities in the Census Bureau to keep their
7 personal information private. And they did not fully
8 understand the importance or what the census was doing and had
9 a lot of questions over whether or not they could trust the
10 federal government.

11 MS. FIDLER: At this time, I'd like to move
12 Plaintiffs' Exhibit 430 into evidence.

13 THE COURT: I think it's been admitted pursuant to the
14 letter that was filed last night.

15 MS. FIDLER: And if we can return to Plaintiffs'
16 Exhibit 462, the GAO report, we'd like to move that into
17 evidence, your Honor.

18 THE COURT: Any objection?

19 MS. BAILEY: No objection.

20 THE COURT: Admitted.

21 (Plaintiffs' Exhibit 462 received in evidence)

22 MS. FIDLER: Please call up Plaintiffs' Exhibit 431.

23 Q. What is this document?

24 A. I believe this may be the second study by Dr. de la Puente,
25 here, evaluating the 2000 census and looking at Latino and

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1 immigrant trust and participation in undercount.

2 Q. And what were the results of this study that you relied on?

3 A. Well, once again, Dr. de la Puente had similar findings as
4 in 1990. I believe he acknowledged that the census had
5 improved, that they had done better in 2000 with respect to
6 Latino and immigrant communities, but that trust and concerns
7 over immigration status remained barriers to participation in
8 Latino and immigrant communities, and he continued to note an
9 undercount and difficulties in the NRFU process in successfully
10 implementing the census in these communities.

11 Q. Dr. Barreto, we discussed a number of studies about trust
12 and sensitivity that were not specifically about a citizenship
13 question, but do these still inform your view?

14 A. Yes, definitely.

15 Q. Can you explain to the Court why these studies are relevant
16 to your conclusions?

17 A. Certainly. So, what these studies document is that there
18 is already an underlying question of trust in what is the
19 federal government going to do with my personal information in
20 Latino and immigrant communities? What de la Puente and others
21 have documented is that even though there was not a citizenship
22 question in 1990, 2000 or 2010, many of those communities
23 perceived that just by filling out the census and providing
24 their full information, that they would be providing that
25 information related to their citizenship status and their

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1 immigration status. These reports regularly cite concerns over
2 immigrant status as a reason for not trusting the census, and
3 so even though those questions weren't there, he documents that
4 those concerns and fears were already there in this community,
5 and he says that's one of the reasons that they have challenges
6 and that they need to work towards assurances in these
7 communities.

8 Q. And did they have recommendations about immigration status
9 questions?

10 A. Yes.

11 Q. What were they?

12 A. The main, sort of summary takeaway from both the 1990
13 evaluation and the 2000 evaluation were that immigrant
14 communities need to be assured that their citizenship status
15 was not relevant to the census; that when they had concerns,
16 they needed to be assured that that information was not being
17 collected and so they could trust the census because they just
18 wanted to count their households and that they were not
19 attempting to understand citizenship status. And that was one
20 of the areas they worked on in the outreach effort, was to try
21 to assure the immigrant community, we understand you have
22 fears, but we're not even asking you about citizenship status.

23 MS. FIDLER: Turn back to PDX 24.

24 Q. Dr. Barreto, we've now discussed the social science
25 literature's findings concerning trust and sensitivity of

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1 questions, first two points here. Let's turn to the third
2 consideration, the macro environment. What do you mean by the
3 term "macro environment"?

4 A. Well, here, I specifically am referring to the social and
5 political context in the country today. As a general
6 principle, we mean it as the setting or the environment in
7 which a respondent filled out the survey, and so how are they
8 not only perceiving the questions but how are they perceiving
9 those questions through the lens of the environment that is
10 surrounding them? And this is identified as a -- commonly
11 identified in the literature as an important consideration.

12 Q. How does the macro environment affect survey response and
13 accuracy?

14 A. Well, the macro environment can greatly increase
15 perceptions of discomfort or anxiety, and it can raise the
16 stakes of participation if you feel that your participation is
17 putting you at risk, and so the ultimate conclusion is that it
18 can greatly reduce participation in surveys. It can also
19 greatly reduce the quality of the surveys, so sometimes people
20 do participate, but due to the environment, they may not give
21 truthful answers. And there's a lot of literature to support
22 that.

23 Q. And how does question sensitivity play into this?

24 A. These are really interlinked with one another. So, you
25 could have a macro environment that is what I refer to as

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1 threatening or creating tension for the respondent, but if you
2 don't ask them any questions connected to that environment, it
3 could be fine; your survey could be fine. So if you have, for
4 the example of the macro environment that I described today,
5 which I'm sure we'll talk about more, but just briefly, that is
6 creating tension or anxiety for many immigrants, and the survey
7 that you go and ask them is what is your favorite flavor of ice
8 cream, the macro environment doesn't affect them. They'll tell
9 you. And so the sensitivity of the question has to be read
10 directly through the lens of the environment in which it's
11 asked, and those two really work hand in hand.

12 We have to understand is this a sensitive question that
13 puts the respondent at risk, and does the respondent perceive
14 that risk today? Because you could have a sensitive question,
15 but if the macro environment is not threatening, you would
16 answer it. So those really need to be, the sensitivity and the
17 political climate really need to be taken hand in hand when
18 evaluating the efficacy of a study.

19 Q. Is this also related to who the respondent is?

20 A. Well, certainly, both the sensitivity of the question and
21 the macro environment would be different for different
22 respondents. You know, related to the potential anxiety over
23 immigration issues today, if your family or community is not at
24 all connected to the immigrant experience, you may not perceive
25 any issues; you don't perceive any change and it doesn't affect

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1 you. So the sensitivity of the questions and the macro
2 environment are directly related to respondents, and different
3 respondents will have different perceptions.

4 Q. Have you provided a slide summarizing some of the research
5 you came across on the effects of the macro environment?

6 A. Yes, I have.

7 MS. FIDLER: Please call up PDX 25.

8 Q. What are some of their findings, the research findings you
9 came across with regard to the effects of the macro
10 environment?

11 A. Well, here, I reviewed a number of studies that were
12 related to what I refer to as immigration enforcement and the
13 environment related to immigration enforcement and how that had
14 effects on participation and honesty of the data that was
15 provided by participants. And what this research finds --
16 there's a lot of research on this topic, and more and more
17 today -- is that when you have a threatening context, when a
18 particular segment of the public feels at threat, feels nervous
19 about the environment, they greatly withdraw from public life.
20 They withdraw in particular from their interactions with public
21 agencies. And in instances where they may ultimately have an
22 interaction with public agencies, they may alter their
23 information. They may give erroneous information, because that
24 threatening context really weighs heavily on those who feel
25 threatened and they do not want to participate. That's sort of

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1 a general takeaway.

2 Q. Let's start with the first bullet. What do you mean by
3 "immigration policing erodes trust in public institutions and
4 discourages immigrant communities from engaging government
5 agencies"?

6 A. This came from a study in which the authors examine the
7 presence of immigration enforcement, cooperation with local
8 sheriff's offices and others in increasing the presence of
9 immigration officials and immigration enforcement, and what
10 they found was that there was significant decline in
11 participation of government agencies, including in examples of
12 withdrawing from services that people were eligible for, from
13 withdrawing from engagements with law enforcement officers for
14 issues that they needed, withdrawing from participation in the
15 educational environment. So when that presence is there and
16 people feel threatened, there's a clear consensus that they
17 will withdraw, those that feel the most threatened.

18 And I want to be clear, it's not 100 percent of people who
19 withdraw, but the finding is very clear. Those people who
20 perceive that threat to them definitely are withdrawing from
21 interactions with government agencies.

22 Q. Can you elaborate on your fourth bullet here, the increased
23 immigration enforcement bullet?

24 A. Yes. So, this is a study that found that when there was
25 increased immigration enforcement -- again, the first was that

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1 it created an environment in this study cite that many people
2 were nervous. People were discussing it. That was one of the
3 findings, that people were aware that there was increased
4 immigration enforcement. And the authors found that many
5 immigrant parents held their children out of school, in some
6 cases for days in a row, because they were so nervous about
7 leaving the house and driving their kids to school. Some
8 parents also believed that because it was a public school, that
9 the immigration officials might be there doing checks. And so,
10 this is an example of withdrawal and how just the mere presence
11 of a threatening environment really weighs heavily and leads to
12 reduced participation. The authors conclude that these
13 immigrant communities are trying to keep their families safe
14 and secure, and they see that risk as too much.

15 Q. And can you elaborate on your fifth bullet here, Hispanics
16 change their racial identifications?

17 A. Sure. In another instance, scholars found that, first, in
18 a similar, threatening context, that immigrants greatly reduced
19 their participation at county health clinics and getting health
20 services. But in some instances, these visits to county health
21 clinics are unavoidable, especially in instances where
22 participants may have needed to take their children in for
23 medical services. And in one particular example in the study,
24 in this published study, the author finds that a
25 Mexican-American woman went to the clinic -- I believe this was

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1 in Texas -- and changed her information on the intake form and
2 she put down for her race white even though Hispanic and Latino
3 was right there on the box. And the interviewer, the scholar
4 asked, why did you change, why did you change your answer? And
5 she said because immigration is here in the town right now and
6 they're working with the government, and they're not looking
7 for white people, they're looking for Mexicans. That was her
8 direct quote. And so she said, So I put white because then
9 they won't come looking for me.

10 So the first part of that study concluded that people were
11 withdrawing, they weren't participating, but when they do, when
12 they go, they were so nervous and anxious that it led them to
13 put false information down to avoid detection.

14 Q. And the bullet at the bottom, the four-fifths of immigrants
15 in one study sample said they avoided for asking for help from
16 government agencies, reporting infractions to the police or
17 attending court if asked, could you elaborate on that study?

18 A. Sure. So, here was another instance in which the presence
19 of a threatening context, and these scholars all point to
20 similar examples of a threatening context, and that is,
21 increased immigration enforcement, is how they generally
22 describe it; that when that happens, when people are thinking
23 about that, that they're far less likely to engage with
24 government. And this was an interesting study, because they
25 even identified things such as reporting things to the police

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1 that would be in their benefit to report, that they had been a
2 victim of a crime or any other things like that, or even going
3 and attending court-ordered meetings, because they were worried
4 that, given the threatening context and the environment, that
5 there would be some risk to them and their family. And so they
6 perceived that threat. They perceived that environment as
7 telling them this is too risky, you need to stay away, and they
8 found very, very high percentages. It indicates here four out
9 of five in these instances who perceived that threat withdrew.

10 Q. How do you think these studies bear on the citizenship
11 question?

12 A. Well, I think there's two ways to think about this and how
13 similar they are. The first is just to think about the current
14 political climate that we have today, what I call the macro
15 environment, and it is quite similar to what these scholars
16 have outlined in different periods in time and different
17 cities; that there is no question that there's a climate for
18 many in the Latino and immigrant community that they would
19 describe as threatening. The addition of the citizenship
20 question, a question specifically asking people about which
21 they are nervous today, leads me to believe that this would,
22 similar to these published studies, greatly reduce
23 participation.

24 Q. Are questions related to citizenship solely an immigrant
25 issue?

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1 A. No, not restricted just to immigrants.

2 Q. To whom do they apply?

3 A. Some of these studies that I cite here -- in particular the
4 Pedraza, Osorio and the Cruz Nichols piece -- they examine
5 whether or not this also applies to what we refer to as the
6 second generation in the sociological literature, meaning those
7 who were born in the United States but whose parents are
8 immigrants. And in those two studies in particular, they find
9 very strong evidence that U.S.-born Latinos whose parents are
10 immigrants also report very high rates of anxiety and avoidance
11 as a result of this threatening climate. So while they
12 themselves have U.S. citizenship, through birth, they view this
13 environment through the lens of their parents, and if their
14 parents do not, it creates a lot of anxiety and stress, and
15 then it leads to avoidance.

16 Q. Has the macro environment significantly changed since 2016?

17 A. I believe it has, yes.

18 MS. FIDLER: Let's go to another slide. Pull up PDX
19 26.

20 Q. Can you please describe this line?

21 A. Yes. This is a short summary of what I believe are some of
22 the changes that the country has seen in the macro political
23 environment in the Latino and immigrant community since 2016.

24 Q. Let's start with the first bullet. Can you please
25 elaborate?

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1 A. Yeah. So, one of the most critical changes in the macro
2 political environment that has created anxiety and threat for
3 immigrant communities was the repeal of DACA, deferred action
4 for childhood arrivals, and this was a policy that was
5 implemented in 2012 that allowed undocumented immigrants to
6 come forward, report their personal information. It was not
7 anonymous. They had to report all of their personal
8 information, including their immigration status, in exchange
9 for getting temporary work permits and to be able to work and
10 live legally in the United States for two years at a time.

11 This was generally a popular program in the Latino and
12 immigrant community, and in September of 2017, that program was
13 repealed. And the implication that is reviewed in the
14 literature but I can also state from my own experience in doing
15 other surveys and focus groups was that there was immediately
16 fear and anxiety in the immigrant community, saying the
17 government had told us that we could provide our personal
18 information, including our immigration status, and that we
19 would be OK, and now they've repealed that program and now they
20 have all of our information and -- including our families'
21 information, and it created a very heightened sense of fear and
22 anxiety.

23 Q. Turning to your second bullet, can you please elaborate on
24 what you stated there?

25 A. Yes. This second bullet is a summary of some public

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1 opinion research that was done by some scholars who study
2 Latino and immigrant public opinion, and following 2016, they
3 did studies assessing views towards the Trump administration.
4 And what their findings were -- that they published in
5 peer-reviewed journals were that a very high percentage of
6 Latinos and immigrants viewed the policies as either hostile or
7 unwelcoming. So it was not restricted in this case to only
8 immigrants, but it was a fairly widespread belief in the Latino
9 community that policies were in place that were hostile towards
10 Latino and immigrant interests.

11 Q. Is your opinion, how is the macro environment likely to
12 affect -- this macro environment, this 2016, likely to affect
13 the addition of the citizenship question to the 2020 census?

14 A. Well, as I said before, the macro environment needs to be
15 sort of read through the lens of what we're trying to compel
16 the public to do, so the macro environment, as has already been
17 reviewed, is creating a lot of trust and anxiety issues in the
18 Latino and immigrant communities. That's undeniable. That's
19 happening right now. But if we were asking people what their
20 favorite flavor of ice cream was, it would not matter.

21 The problem is the census is attempting to ask the question
22 about the exact topic that people are anxious and nervous about
23 and very fearful about, and so this political environment today
24 in the immigrant community is creating the context that will
25 result in a very reduced participation in the census if the

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1 citizenship question is included.

2 Q. Are the concerns about citizenship status limited to the
3 Latino immigrant community?

4 A. No.

5 Q. Can you please elaborate?

6 A. Yes. In my survey data but also in the review of the
7 political environment, the research suggests that this is
8 across all immigrant communities. Latinos and Latino
9 immigrants may feel primarily at risk, because of news coverage
10 and statements, but other immigrants in the Asian American and
11 African-American community also indicate that they feel at
12 threat. Really, any immigrant who feels that these policies
13 may be directed at them feel threatened.

14 Q. Dr. Barreto, we've now talked about the social science
15 research that you've done about trust, sensitivity and the
16 macro environment. From your social science research and your
17 experience, have you come to any conclusions about the impact
18 of the citizenship question?

19 A. Yes.

20 Q. What are those conclusions?

21 A. Well, based on my review of the literature, as I said, both
22 the published social science literature as well as the census
23 reports, I conclude that the addition of a citizenship question
24 was a particularly sensitive question and that the addition of
25 this question in today's macro environment would result in

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1 reduced participation in Latino and immigrant communities in
2 2020.

3 Q. Dr. Barreto, did you also look at social science literature
4 concerning how nonresponse follow-up will play out in the
5 context of the citizenship question?

6 A. Yes.

7 Q. What is nonresponse follow-up, or NRFU?

8 A. This is -- well, the nonresponse follow-up, or NRFU,
9 specifically, is an acronym or a term that the census is using
10 to relate to their efforts to encourage participation when
11 someone initially declines participation. Generally speaking,
12 this is a common process in survey methodology research, where
13 you do attempt to increase your response rate through follow-up
14 measures.

15 Q. And what is your opinion of whether NRFU will succeed in
16 2020?

17 A. My opinion is that due to the citizenship question, there
18 will be heightened concerns and trust issues related to
19 confidentiality and that these concerns will make the NRFU
20 process less successful in 2020.

21 Q. Do you have an opinion as to whether NRFU will function the
22 same across all demographic groups on the 2020 census?

23 A. Yes. I believe that it will not function the same. As we
24 were just speaking about, the trust and sensitivity is really
25 depending on which demographic group you're in. So for some

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1 groups, the NRFU process this year might be as successful in
2 previous years. They may feel no change. It may just be that
3 follow-up. But for other groups who feel that the question is
4 sensitive and is putting them at risk, it is expected to be far
5 less successful. So not only do I think overall NRFU will be
6 more challenging and less successful, but there will be a
7 differential success rate, and in particular, Latino and
8 immigrant communities are expected to have less NRFU success.

9 Q. In your opinion, could the NRFU process close the gap for
10 the Latino and immigrant communities?

11 A. It's possible that it could close the gap.

12 Q. Do you think it's likely?

13 A. I do not believe it is likely. I think, if anything, as I
14 review in my conclusion, it could actually widen the net
15 differential gap, but it could also ultimately lead to less
16 participation through the process of repeated follow-ups and
17 visits to the community, a process that I describe as
18 monitoring or surveillance, and that is supported in the
19 literature.

20 Q. Let's just do a quick overview of the NRFU steps and
21 identify specifically where you believe it will not work and
22 why. Dr. Barreto, have you prepared a slide to help guide our
23 discussion of NRFU?

24 A. Yes.

25 MS. FIDLER: Please call up PDX 27.

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1 Q. Is this that slide?

2 A. Yes.

3 Q. Let's talk about the first step, enumerators. Can you
4 explain what this first step of NRFU looks like?

5 A. Once it's been determined that a household did not respond
6 to the self-report on the census, the Census Bureau will send
7 enumerators out into the community, and they will do multiple
8 visits to households. They will leave behind materials and
9 literature about the census and information. They will, in
10 some cases, talk to neighbors to try to get a sense of the
11 neighborhood. But ultimately, they're trying to return
12 multiple times to a household and encourage the household to
13 participate. That's the first part.

14 Q. How many times do they go out?

15 A. I believe they go six times, or they hope to go six times.
16 Sometimes things get in the way that prevent them from doing
17 all six, but that's their goal.

18 Q. OK. So the enumerators go out into the field. What
19 activities do they do, specifically?

20 A. The enumerators are hoping to speak with household members
21 to give them assurances of participation, of confidentiality,
22 of trust, and so they attempt to make these interactions at the
23 doorstep or in the community and to try to encourage people to
24 participate in the census.

25 Q. And what methods of contact do they use?

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1 A. They'll contact people -- I believe they start out -- you
2 know, if you're not a self-responding house, they will send
3 additional mail. In some cases there are phone numbers where
4 people can call or check in, but there are also in-person
5 visits, where they come to your doorstep and either attempt to
6 speak with you, or if you're not there, they might leave a door
7 hanger or other information directly at your household.

8 Q. Based on your research, is this likely to be effective with
9 people who are not responding to the census due to the
10 citizenship question?

11 A. No, I do not believe this will be effective specifically
12 for that group who is not responding due to the citizenship
13 question.

14 Q. Why not?

15 A. Well, because as I reviewed in the survey methodology
16 portion of my report, trust and confidence are critical to
17 understanding participation rates. So if you had a population
18 that was, say, too busy, they forgot to fill out the census,
19 they had hoped to get to it but other things came up, some
20 nonresponse follow-up might compel those folks to participate,
21 say oh, yes, I'm sorry, you're right, I forgot, I'll do it.

22 In this case, we have a specific population who is nervous
23 and anxious about the citizenship question, given this
24 environment. And so the review of the literature as well as my
25 survey lead me to conclude that that will not change people's

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1 minds. If they don't believe that the data will be held
2 confidential, additional visits are not going to help complete
3 surveys.

4 Q. You mentioned earlier that the Census Bureau will leave
5 materials at the house if the household members aren't home.
6 Do you have an opinion on how effective those notices will be?

7 A. I do not believe the notices will be effective, and I
8 believe, given the review of the literature I have,
9 particularly in the rebuttal report, there is a very good
10 chance that the literature that is left behind will create more
11 anxiety and fear in many immigrant communities because it will
12 resemble government monitoring or surveillance, leaving
13 information that somebody from the government was at your
14 doorstep, they're coming to try to find out your household
15 count, your personal information about your household, and that
16 is a strong finding in the literature.

17 MS. FIDLER: Let's call Plaintiffs' Exhibit 448.

18 Q. Dr. Barreto, what is this document?

19 A. This is a report or a slide-deck presentation that was
20 presented about a year ago now at an advisory committee meeting
21 that the Census Bureau hosted related to topics of racial and
22 ethnic minority populations.

23 Q. And who is the author?

24 A. The author is Mikelyn Meyers, who is a part of the center
25 for survey measurement inside the Census Bureau. So this is a

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1 Census Bureau report, or presentation, that was presented at --
2 I believe there were lots of other people participating in this
3 meeting, a year ago.

4 Q. And is this one of the reports on which your opinion is
5 based?

6 A. Yes, it is.

7 Q. Let's walk through a few pages from this document, starting
8 with page 2.

9 Dr. Barreto, why did the Census Bureau undertake this
10 study? What type of research was being conducted?

11 A. Well, as was discussed by the previous witness, the census
12 is constantly evaluating and attempting to understand
13 challenges, barriers, areas for improvement, and so they're
14 always out in the field assessing the census as they prepare
15 for the decennial census. And so this was not a separately
16 commissioned study on any particular topic, but what happened,
17 according to this report, was that they were just in the field
18 doing their regular course of business, and they reported they
19 found evidence that respondents were starting to express
20 concerns to field staff specifically about confidentiality of
21 data related to immigration. And so as a result, they looked a
22 little bit deeper and compiled this presentation that they
23 presented in November of 2017.

24 MS. FIDLER: Let's go to page 7.

25 Q. What did the Census Bureau researchers find?

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1 A. Well, as titled on this slide, they reported what they
2 called "unusual respondent behaviors," and this was during the
3 pretesting, so they were just in the field doing their regular
4 business, and what they found was that respondents were
5 especially nervous, anxious, and did not want to participate.

6 Here, on this slide, they refer to their respondents as Rs,
7 sort of shorthand in survey methodology, so anytime it says
8 capital R lower case S, that means respondents. And what they
9 found here, what they noticed when they were out in the field,
10 was that respondents were trying to stop interviews; that they
11 were nervous about their personal identifying information; they
12 wanted to know who would have access to this data. And as they
13 indicated here, in many instances, they left household members
14 off the roster, meaning off the count, or they provided false
15 information. So again, this was not a study that was meant to
16 be done on confidentiality. This is just evidence that started
17 to percolate and come up as they were out in the course of the
18 field, and they reported it as very unusual behavior.

19 Q. A bullet that mentions "left household members off the
20 roster," what happens to people who are left off the roster at
21 this stage?

22 A. Any household that fills out the census, the Census Bureau
23 will just take their word for what they put down on the
24 household roster, and so if somebody is left off the roster,
25 they are permanently undercounted. So if you have four

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1 household members but you only write down two, they do not
2 attempt to come back and correct that information. They just
3 take two and put that down.

4 MS. FIDLER: Let's go to page 8.

5 Q. What kinds of concerns were raised by respondents to these
6 researchers?

7 A. Well, here you have, on page 8, a summary of respondent
8 perceptions, so these are either quotes that came from a focus
9 group, perhaps, of people discussing this or directly quotes
10 that were given to the field staff. These are actual people
11 who would be filling out the census, which is this part,
12 portion of the study. And what the respondents said -- these
13 two respondents here in particular were Latino and speaking to
14 field staff in Spanish, that "the possibility that the census
15 could give my information to internal security and immigration
16 and could come and arrest me for not having documents terrifies
17 me. And that view was shared by the second respondent here,
18 who said, "particularly with our current political climate, the
19 Latino community will not sign up because they think the census
20 will pass their information on and people can come looking for
21 them."

22 And so this is something that the census themselves noted,
23 and as I already discussed, is something that already existed,
24 that social scientists were already observing this in the
25 community.

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1 MS. FIDLER: Let's look at page 12.

2 Q. How does this information support your findings?

3 A. So, page 12, they're now shifting to a portion of their
4 presentation where these are census field staff. These are the
5 actual interviewers. These are not the respondents in the
6 households, but these are now a portion where the census
7 interviewed their own staff and said, well, what did you find,
8 what did you learn, what were the takeaways of being in the
9 community? And the census field staff noted that there was
10 particular concern about citizenship, that that was what was
11 driving this breakoff.

12 As you can see from the first point, a field staff member
13 noted that a respondent walked out and left the interview
14 during the citizenship question. Others reported that they
15 were very worried about giving out legitimate names because
16 they felt that it would be used to track them down.

17 And finally, here, one interviewer noted an experience when
18 they were in the community and doing enumeration, and I found
19 that this was particularly relevant to my conclusions because
20 it corroborated much of the existing literature. They said:
21 That: "There was a cluster of mobile homes, all Hispanic. I
22 went to one and I left the information on the door. I could
23 hear them inside. I did two more interviews, and when I came
24 back, they were moving. It's because they were afraid of being
25 deported."

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1 And so, again, just during the normal course of their
2 pretesting, many field staff noted that there was, as they
3 described, unusual behavior by respondents, very high --
4 heightened level of anxiety and fear.

5 MS. FIDLER: Let's turn to page 13.

6 Q. Can you describe the behavior changes on this slide?

7 A. So here, again, these are the interviewers, the
8 enumerators, census staff, many of whom have worked for the
9 census for multiple years, and now they're providing
10 evaluations of what's happening with the macro environment and
11 how it is affecting their ability to implement the census.

12 In particular, I think, the third bullet point here is one
13 that is very consistent with my review of the literature as
14 well as my data, where this field staff reported back to their
15 supervisor, "Three years ago was much easier to get respondents
16 compared to now because of the government changes and trust
17 factors. Three years ago I didn't have a problem with
18 immigration questions." And for me, that speaks to how the
19 change in the political environment, the macro environment
20 changes, and that's why I said earlier, it interacts with the
21 types of questions you're asking. This person is saying three
22 years ago they might have been able to ask some of these
23 questions, but now that raises a heightened fear and they're
24 not able to get participation.

25 Q. And how does the second bullet influence your conclusions

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1 in this case?

2 A. Well, the second bullet, one of the interviewers noted, and
3 we saw this in a previous bullet earlier in the report, that
4 respondents were specifically asking the census field staff
5 about citizenship. Does it make a difference if I'm not a
6 citizen? Can I still participate? Are you going to use that
7 information to track me down?

8 So, respondents in the community were telling field staff
9 that they were particularly uncomfortable about immigration and
10 citizenship questions, and that's -- again, that wasn't the
11 point of this study. It was just regular pretesting, and the
12 field staff noted this and that's where this report came from.

13 Q. How does this impact your views on NRFU?

14 A. I think this is a really good example of how leaving
15 information behind and having that presence in the community is
16 not going to compel participation, and if anything, it's going
17 to create more fear and anxiety the more that there is a
18 presence in the community. And so, I take this as evidence
19 that NRFU is going to be far less successful in Latino and
20 immigrant communities in 2020.

21 Q. Do you recall when this research was done?

22 A. I know it was presented November of 2017, and I believe it
23 was done in -- earlier in 2017.

24 Q. Do you know if this was after the 2016 ACS?

25 A. I believe it was after the 2016 ACS, because some of the

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1 interviewers noted changes in government, and so I believe
2 these were done in 2017.

3 Q. But this was also before the citizenship question was even
4 added, is that correct?

5 A. That's right. The citizenship question was not formally
6 added until earlier this year, but what this evidence suggests
7 is that many of these respondents were already nervous about
8 that as an issue.

9 MS. FIDLER: Can we turn, finally, to page 15.

10 Q. Are you aware of research confirming that the field workers
11 were having difficulty enumerating these populations?

12 A. That's correct.

13 Q. And how did this information impact your opinion on that?

14 A. Well, this final slide is one of their summary takeaways,
15 from the census staff, and in particular what they pointed to
16 was they called an unprecedented groundswell in confidentiality
17 and data-sharing concerns particularly among immigrants or
18 those living with immigrants.

19 Again, this is consistent with my definition of sort of the
20 immigrant community as well as those even what I call adjacent.
21 So this was a takeaway. This was something they learned in
22 this pretesting, was that there was high degree of
23 confidentiality and data-sharing concerns, and as they
24 concluded here, this would present a barrier to participation
25 in 2020 and would impact data quality, and many examples of

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1 people saying that they would give out fake information, and
2 that it would not be felt equally everywhere. They were really
3 only observing this in Latino and immigrant communities and
4 that it would disproportionately impact those communities.

5 Q. Do you have slides summarizing other Census Bureau research
6 on this point?

7 A. Yes, I do.

8 MS. FIDLER: Please call up PDX 28.

9 THE COURT: Ms. Fidler, would this be a good time to
10 take our morning break?

11 MS. FIDLER: Sure. That's fine, your Honor.

12 THE COURT: All right. Very good. It's three minutes
13 to 11. If you could be ready to go at 11:07, that would be
14 great. We will break until then.

15 Thank you.

16 (Recess)

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1 THE COURT: Surely by now, if I say 11:07, you know I
2 mean it. I gave you an extra minute, in any event.

3 Dr. Barreto, you're still under oath.

4 Ms. Fidler, you may continue.

5 MS. FIDLER: Thank you, your Honor.

6 THE COURT: Do you have a sense of scheduling, how
7 much longer you have on direct and how we're doing on today's
8 schedule?

9 MS. FIDLER: We have quite a bit for testimony on
10 direct, your Honor. I think we will probably go past lunch for
11 direct.

12 THE COURT: All right. Well, lets carry on and see if
13 we can get the witness done today, but if not, we'll figure
14 that out.

15 MS. FIDLER: We are certainly aiming to wrap up with
16 Dr. Barreto today, if possible.

17 THE COURT: I'm sure he would be pleased to hear that.

18 THE WITNESS: I am aiming for that as well.

19 THE COURT: Go ahead.

20 BY MS. FIDLER:

21 Q. I believe we were discussing a slide summarizing Census
22 Bureau research, PDX 28.

23 Dr. Barreto, can you describe -- I'm sorry -- what is the
24 title of this slide?

25 A. This is a slide I prepared to evaluate NRFU, the

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1 nonresponse followup. And the title reads, Census research
2 demonstrates that NRFU is Unlikely to succeed with those
3 sensitive questions due to citizenship.

4 Q. Lets start with the first bullet point.

5 Can you read that and describe the studies that were
6 involved?

7 A. Yes.

8 All three of these studies come from either census reports
9 or other scholars who studied census implementation. So it is
10 directly related to the implementation of the census. These
11 studies all evaluated the threatening or perceived threatening
12 context.

13 So starting with the first, this was a study that concluded
14 that undocumented immigrants in three jurisdictions -- San
15 Diego, Miami, and Marion County, Oregon -- avoided contact with
16 census field workers, which ultimately led to omission and
17 undercount, and it was according to some 1992 studies that I've
18 cited there at the bottom.

19 Q. And your second bullet, the Census Bureau concluded in 2018
20 that "households deciding not to self-respond because of the
21 citizenship question are likely to refuse to cooperate with
22 enumerators," which will increase NRFU costs and affect
23 quality.

24 Can you elaborate on that study?

25 A. Yes. I believe this is from the Brown, et al., 2018 study,

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1 which has a recently produced census research paper or white
2 paper, and this paper concluded that there would not only be a
3 lower self-response rate due to the citizenship question, but
4 that this would affect NRFU as well.

5 This negative -- this perceived negative environment
6 would follow through all the way through the NRFU process,
7 leading people to be less likely to participate and interact
8 with field staff.

9 Q. Your third bullet, a census study found that local
10 immigration enforcement laws in Arizona and Texas passed
11 shortly before the 2010 census "had an important role in
12 enumeration," increasing nonresponse and decreasing NRFU
13 effectiveness.

14 Could you please elaborate on this study?

15 A. Yes.

16 I believe this is the Terry, et al. study from 2017, in
17 which they found that there was a direct link, according to
18 these scholars, between the increased immigration enforcement,
19 and they highlight some laws that were passed in Arizona and
20 Texas, and how in the presence of that increased immigration
21 enforcement, it led to a lower enumeration and specifically
22 noting that it made NRFU less effective.

23 The main take-away is that if people are choosing to not
24 participate in the census, if they are pulling themselves out
25 due to a threatening context, that the NRFU cannot fix that

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1 because that cannot is still there and that threat is still
2 there.

3 So whatever problems we have in lowering the self-report
4 will stay for those same communities and we will have problems
5 with NRFU.

6 Q. At the bottom, can you explain your conclusion about NRFU?

7 A. Well, just that the enumeration process during NRFU is
8 unlikely to be effective, and instead, it is likely to widen
9 the gap or exacerbate the differential between white and
10 immigrant -- nonimmigrant communities, which may not be
11 threatened and may participate regularly with NRFU, and Latino
12 and immigrant communities who will feel more threatened and
13 will participate at lower rates.

14 So whatever gap or differential we have just at the
15 beginning in self-response, the NRFU process will seek to widen
16 that because where it will be successful will be in those
17 communities that already had a higher self-response rate, and
18 Latino immigrant communities are likely to further have
19 problems responding.

20 Q. Lets go back to PDX 26. I apologize, your Honor. I meant
21 PDX 27.

22 So we've talked about enumerators at the first stage of
23 NRFU. Lets talk about administrative records.

24 How does the Census Bureau propose to use administrative
25 records within the NRFU process?

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1 A. Well, the administrative record matching, as I describe it
2 here, is a process by where a non-responding household, a
3 missing household, will be attempted to be matched or merged
4 against other administrative records to see if there is other
5 government records of someone living at that household and who
6 lives there, how many people, and they hope to use these
7 administrative records to fill in some of the gaps of the
8 non-responding households.

9 Q. How does the use of administrative records in the NRFU
10 process impact the count of these households?

11 A. Well, the administrative records hopes to fill in the total
12 household size, and if they can find administrative records on
13 that household, they will count it as enumerated and it may not
14 need an additional visit. They will count it as being counted.
15 So that is the goal of the administrative records.

16 Q. In the NRFU context, are administrative records as accurate
17 for immigrant households?

18 A. No, they are not.

19 Q. Would you please elaborate?

20 A. In some of the census self-reports in particular, they've
21 done some of the best research on this topic because, of
22 course, they have access to all the government documents. It
23 is an advantage of being on the government side and seeing all
24 the records. They report in, I believe, in the Brown, et al.
25 study that I just referred to, that administrative record

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1 matching is less successful or less accurate for immigrant
2 communities.

3 This is a consistent finding in the social science
4 literature that I reviewed and cited in my report, that many
5 immigrants, especially noncitizen households, are likely to
6 have far less accurate administrative records and far less
7 visible in the administrative record process.

8 Q. Do you have an understanding of why that is?

9 A. Well, the literature on that point concludes that, similar
10 to part of what I summarized earlier on this specific point,
11 that they are seeking to avoid detection. That is one issue,
12 that people are less likely to fill out and provide accurate
13 information to other government sources if they are seeking to
14 avoid detection.

15 The second is that the community is often described as more
16 mobile and less residentially stable. So where there are
17 records, those records may be inaccurate or out of date. So
18 for these reasons, the Latino and immigrant community is likely
19 to have less accurate or less available administrative records
20 as compared to white and nonimmigrant populations, where the
21 administrative records are found to be more accurate.

22 Q. Will the citizenship question make it harder to use
23 administrative records successfully?

24 A. Yes.

25 Q. Why is that?

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1 A. Well, the first reason is that there will be way more
2 people, way more households who will need to be looked up,
3 because far less people are going to be replying to the
4 self-response. So normally, if you only have to match 100
5 administrative records, that is going to be a more manageable
6 process than if you have to match 1,000. So just by the virtue
7 of putting more people in, it is going to create difficulties.

8 But second, the characteristics of the people who are
9 going to get matched or need to get matched are going to be the
10 ones for which the records are less reliable. So if those who
11 are already seeking to avoid detection don't participate, they
12 don't have good administrative records, you're now putting the
13 hardest account population in need of administrative matching,
14 and they don't have good records to begin with.

15 That is a direct result of the citizenship question.

16 Q. All right. Returning to the third phase of NRFU proxy
17 response, briefly what is proxy response?

18 A. So this is typically the final phase, but some of these
19 phases can overlap with one another.

20 This is where the census might use people in the community,
21 neighbors or landlords, to attempt to understand how many
22 people and who lives in a particular household.

23 Q. Have you formed any opinion as to the impact of proxy
24 response on the count of Latino and immigrant communities?

25 A. Yes.

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1 Q. What is that opinion?

2 A. That in the presence of a citizenship question, the proxy
3 response will be far less forthcoming to begin with, less
4 people will volunteer to serve as proxies on behalf of other
5 people in their community, and secondly, that the proxy
6 response information will be less accurate either because
7 people don't know the answer or they are not willing to provide
8 that information to the census if they believe that there are
9 people who would be at risk of immigration enforcement.

10 Q. In terms of household size, how accurate is proxy
11 information for Latino and immigrant households?

12 A. Well, there is already literature examining this and has
13 found that proxy responses are generally less accurate. When
14 proxies are used, they tend to report wrong information in the
15 direction of smaller households than households actually are.
16 So that would result in additional undercount.

17 Q. If a proxy is given information that is missing a few
18 people from a landlord or a neighbor, how are the missing
19 people enumerated?

20 A. They are not. They are undercounted.

21 So once the census successfully completes a record,
22 whatever count is in there, whether the individual household
23 member leaves people off the roster or if the proxy reports
24 inaccurate information, whatever answer is on there is the
25 answer that the census records. So those people would remain

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1 undercounted.

2 Q. Can we please call Plaintiffs' Exhibit 162.

3 What is this document?

4 A. This is a recent census report or white paper that I
5 referred to as the Brown, et al. 2018 paper.

6 Q. What is the title?

7 A. The title of this is understanding the quality of
8 alternative citizenship data sources for the 2020 census.

9 Q. Does this study draw any conclusions about the impacts of
10 the citizenship question on the NRFU process?

11 A. Yes.

12 Q. Lets turn to page 41. Can we highlight paragraph seven.

13 We've got a highlighted paragraph reading: Households
14 deciding not to self-respond because of the citizenship
15 question are likely to refuse to cooperate with enumerators
16 coming to their door in NRFU, resulting in the use of neighbors
17 as proxy respondents and their belief, and they continue on.

18 Can you describe this information and how it informed your
19 opinions?

20 A. Yes.

21 This was taken from census data. This was a census
22 research team that compiled this report. And what they
23 concluded was that the addition of the citizenship question
24 would first result in lowering the self-response of impacted
25 communities and that that would continue, that non-responding

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1 behavior would continue through the NRFU process.

2 So they recognized that these hard-to-count populations
3 will remain hard to count, and that that will result in a much
4 increased use of neighbor proxies. And they go on to conclude
5 that it is well documented that proxies supply less accurate
6 information than self-responding information.

7 Q. Can we also turn to page 43. Lets see. Midway through.

8 Could you read the highlighted passage?

9 A. Yes.

10 As shown above, reference persons are much less likely to
11 answer the citizenship question for nonrelatives in the
12 household than for themselves, so they may be even less likely
13 to answer it for neighbors.

14 Q. How did that inform your opinions?

15 A. Well, here, they are making a connection to the proxy
16 process, where they indicate that given that they already know
17 that people are hesitant to report sensitive information about
18 other nonrelatives in their own household, they may be even
19 more likely to want to report that for neighbors. So I
20 interpreted this as one passage, which suggested that proxies
21 in 2020 would be less effective in this community.

22 Q. Dr. Barreto, given your social science research as a whole
23 and NRFU, what do you expect the anticipated effects of NRFU
24 will be throughout the process in 2020 as a result of the
25 citizenship question?

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1 A. Well, I believe that the citizenship question, coupled with
2 the political environment that immigrants perceive, will make
3 it very difficult for census enumerators to convince people to
4 participate, and that this will remain a very low participation
5 rate, not only of the self-response, but throughout the entire
6 NRFU process. That will result in an undercount of many in the
7 Latino and immigrant community.

8 Q. Lets turn now to your survey.

9 First, why did you choose to rely upon survey research?

10 A. Well, survey research is a very effective means. It is a
11 very effective methodology for understanding public opinion and
12 public response to administrative changes.

13 So in this case, I felt it was appropriate, it was
14 consistent with previous research studies I had done, and I
15 thought it would help us answer this question of what response
16 rate will be in 2020.

17 Q. Can survey results be extrapolated to the national
18 population?

19 A. Yes.

20 Q. How?

21 A. Well, the most important component is that the results are
22 representative and randomly selected.

23 So if you have a randomly selected population in your --
24 excuse me -- sample in your survey, it can then be extrapolated
25 to reflect the general public opinion or attitudes of the

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1 population at large.

2 Q. Is survey research considered a reliable scientific
3 methodology?

4 A. Yes, definitely.

5 Q. Could you explain the basis for that conclusion?

6 A. Well, it is a methodology that has been very rigorously
7 tested and extensive scientific standards are applied to the
8 implementation. It has been refined considerably over the
9 decades.

10 And today, survey research is a type of methodology
11 that is relied upon by the federal government, not just in the
12 census, but in many different agencies, to collect and tabulate
13 information. It is also extensively relied upon in the social
14 sciences, in order to understand and advance research on public
15 opinion and participation.

16 Q. Please call Plaintiffs' Exhibit 427.

17 Dr. Barreto, what is this study?

18 A. This is a study by Professor Henry Brady at the University
19 of California at Berkeley that is a review of what survey
20 research has taught us as political scientist and social
21 scientists.

22 Q. Can we have a call-out on page two.

23 What did the Brady study conclude?

24 A. I draw the attention in particular to the bottom sentence
25 here where in his review he says that no other method for

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1 understanding politics is used more and no other method has so
2 consistently illuminated political science theories with
3 political facts.

4 Really, the conclusion of this study, he reviews a number
5 of different implementations and applications of survey
6 research and concludes that it is really the hallmark for
7 establishing political facts and political behavior.

8 Q. What is accuracy in a survey?

9 A. Well, quite simply, we want to be sure that the survey is
10 reflective of the larger population, that we can take the
11 answers in a survey on their face, and that we can apply them
12 or extrapolate them, as you said previously, to the larger
13 population.

14 Q. Are there fundamental principles to ensure that survey
15 research is designed and implemented accurately?

16 A. Yes.

17 Q. What are the key principles?

18 A. Well, as a starting point, I'll start with the same
19 principle I did in my literature review and evaluation of the
20 census. That is trust.

21 In order for a survey to be accurate, respondents need
22 to trust the survey taker in order to participate and give
23 their full and truthful answers.

24 The second principle after assuring trust is the
25 representative necessary of the survey. In order for it to be

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1 accurate, we have an understanding that we have selected the
2 sample in a random and representative fashion so that it can
3 then be inferred to the population as a whole.

4 Q. How do you ensure statistical reliability with survey
5 research?

6 A. Well, the first component is that you need to make sure
7 that you have an accurate sample size. In order to make
8 statistical claims with certainty about your survey findings,
9 you want to make sure that you have interviewed enough people,
10 but that secondly, regardless of how many people you've
11 interviewed, that they are reflective and that they are
12 representative of the underlying population. If you do that,
13 then you can have quite high statistical reliability in your
14 estimates.

15 Q. We'll get into the details of your survey a little bit.

16 Did your survey follow these principles for
17 reliability?

18 A. Yes.

19 Q. Can you explain how taking a poll of a few hundred or a few
20 thousand people can be said to be representative of a state or
21 a nation of millions of people?

22 A. So one of the advances that we have made in survey research
23 and survey science has to do with sampling theory. So what was
24 established early on was that you have to make sure that
25 respondents are selected at random and that respondents are

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1 given an equal opportunity to participate in the study, that
2 you're not excluding certain respondents and not overly
3 including others.

4 So long as you follow that principle of randomness in equal
5 opportunity to participate, we can then take the sample of
6 about, lets say, 1,000 people and draw inferences to the larger
7 population.

8 Every survey still has a margin of error or a confidence
9 interval around the estimates. That is part of the survey
10 reliability. And so we report that, but that gives us
11 confidence in the findings.

12 Q. What does it mean to be statistically significant?

13 A. Well, there, what we mean is that when we're reporting a
14 result for our survey, that that result that we're reporting is
15 real and that it is different from zero.

16 Sometimes we're comparing the results across different
17 groups, and what we're asking for something to be statistically
18 significant is that the survey has enough reliability to
19 conclude that those results are, in fact, real results and that
20 you can have certainty in your interpretation.

21 Q. How is asking people their thoughts and opinions a reliable
22 predictor of what they will actually do?

23 A. Well, survey research has established that the best way to
24 understand what people have done or what they will do is to ask
25 them. This is reviewed in that Brady article that we talked

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1 about earlier. He reviews extensive use of public opinion
2 surveys and concluded, with many examples in that paper, that
3 the best way to establish these as political facts, he calls
4 them, is through survey research.

5 So many studies have done a validation process, where after
6 the survey is over, they will check your voting records or
7 other behaviors, and finds very high correlation between what
8 people say they are going to do and what the records reflect.

9 So we take them at their word, and extensive social science
10 data has confirmed that this is our best way of understanding
11 public behavior.

12 Q. Is there any kind of peer review for survey research?

13 A. Yes.

14 Q. What kinds of peer review are there?

15 A. There is really two processes of peer review.

16 The first would be as you are developing the survey in
17 attempting to get your survey findings published, you are going
18 through a peer review process where when you're sending that
19 research to an academic journal for consideration, people are
20 reviewing your survey methodology, they are reviewing the
21 standards that you implemented, the questions you asked, and
22 those external reviewers are asking questions to make sure that
23 it is accurate. So that the first.

24 The second is the standards that are established by the
25 American Association of Public Opinion Research, that is

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1 commonly referred to by its acronym, APPOR. This organization
2 is sort of the watchdog of survey research. They establish
3 standards, they occasionally weigh in and review other surveys
4 that are being released and discussed in the media, and
5 people -- they host conferences where they have round table
6 discussions about survey methodology. And so APPOR is an
7 important organization that helps advance peer review.

8 Q. Have you presented at AAPOR conferences?

9 A. Yes. I have presented numerous times, both as an invited
10 speaker, as a round table participant, typically to discuss
11 survey methodology in the Latino and immigrant community. I
12 have also published papers in both of the AAPOR journals.

13 Q. Do these principles of survey methodology also apply to the
14 census?

15 A. Yes, definitely.

16 Q. Dr. Barreto, lets turn to the survey that you did in this
17 case starting with an overview of methodology and the initial
18 design.

19 What was the survey designed to determine?

20 A. The survey was designed primarily to look at response rates
21 to the 2020 census in the face of a citizenship question. That
22 was the primary objective.

23 I also designed the survey to be able to understand why
24 people would or would not participate in the census, and also
25 to evaluate whether or not the NRFU in the imputation process

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1 might be successful or not.

2 Q. Does a nonresponse rate tell you whether there will be an
3 undercount?

4 A. Not by itself.

5 Q. Could you elaborate?

6 A. The nonresponse rate is the first ingredient, it offers the
7 first clue of a potential undercount or a potential problem. I
8 think it is, perhaps, the most critical ingredient in that, and
9 that has been corroborated by other research studies. But the
10 nonresponse rate is just the first step.

11 Q. Who was the target audience of the survey?

12 A. In the survey, we interviewed a random sample of all
13 Americans. And so we did a nationwide survey across all states
14 in the United States.

15 Q. How did you decide who to contact?

16 A. We wanted to make sure that we used a random and
17 representative approach, and so we used a process of
18 combination of random digit dialing as well as random household
19 dialing.

20 Q. What is random digit dialing?

21 A. Random digit dialing is a principle in which the known area
22 codes and then the known prefixes, first three numbers your
23 telephone number, are known, and then the final four numbers
24 are generated in random blocks in order to make sure that every
25 single phone number that exists has an equal chance to be

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1 selected into the survey and be dialed for the survey. So that
2 helps us make sure that we are not leaving anyone out and that
3 all households are potentially sampled.

4 Q. Did your survey include the use of cell phone numbers?

5 A. Yes.

6 Q. Approximately how much percentagewise?

7 A. I think about half, about half of the completed respondents
8 completed the survey through a cell phone.

9 Q. Did you do something called an oversample?

10 A. Yes, I did.

11 Q. What is an oversample?

12 A. An oversample is a term in survey research which really
13 just means an extra sample or a separate sample of a particular
14 group that you might be especially interested in and want to
15 have more precision in your understanding or estimates of that
16 community. So you complete extra or additional interviews.

17 Q. Why did you do that in this case?

18 A. We did that first with the Latino community nationally
19 because the literature guided us that this would be a community
20 that could be particularly affected or at risk, so we wanted to
21 increase the sample there just to get a better understanding of
22 what was happening.

23 We also did that with some geographic oversamples and,
24 again, these were all for the point of just trying to get a
25 richer picture in those communities.

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1 Q. Where did you do your oversamples?

2 A. So the Latino oversample was nationally, and so we
3 interviewed, I believe, an extra thousand respondents who were
4 Hispanic or Latino across the country.

5 In addition to that, we had geographic based over samples
6 in the State of California, in the city of San José, and in the
7 Texas border counties of Cameron and Hidalgo.

8 Q. How many respondents did you have complete the full survey?

9 A. The overall survey contains 6,309 respondents.

10 Q. Is that how many people you called or how many people
11 completed the survey?

12 A. That is how many people completed the survey. We called
13 many more people.

14 Q. Do you know how many more people?

15 A. I report the response rate in the survey, and my
16 understanding is that it is well over 20,000 people would have
17 been called. And out of that group, 6,309 completed the full
18 survey.

19 Q. Is that a large survey?

20 A. The 6,000?

21 Q. Yes.

22 A. Yes. That is a quite large sample size.

23 As I mentioned earlier, a typical survey might be in
24 the 1,000 or 1,500 respondents on average. These were ones
25 that we are used to seeing reported in the media, by research

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1 organizations like the Pew Journal Trusts or organization.
2 Those are usually around 1,000.

3 In this case, we had 6,309, which would be a very large
4 sample size.

5 Q. With regard to the execution of your survey, who
6 implemented the survey, who made the calls?

7 A. The survey was administered and implemented by a data
8 collection firm called Pacific Market Research in Seattle,
9 Washington.

10 Q. Have you worked with PMR before?

11 A. Yes.

12 Q. Did you oversee the implementation of this survey?

13 A. I was in communication with Pacific Market Research to make
14 sure that we were on the same page. They actually oversaw the
15 day-to-day implementation of the survey, but yes, I had
16 extensive discussions with them just to make sure that they
17 were implementing the survey to our specifications.

18 Q. Is PMR considered a reliable survey firm?

19 A. Yes.

20 Q. What is the basis for your conclusion?

21 A. Well, PMR has worked on numerous other high-profile
22 litigation where they are provided survey research not only
23 with myself, but with other partners. They regularly are
24 commissioned to do research by government agencies, as well as
25 major corporations in the United States. So they have a quite

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1 extensive resume and reputation.

2 Q. When was the survey conducted?

3 A. The survey was conducted in July and August of 2018.

4 Q. How did PMR ensure that the execution of the survey
5 prevented bias?

6 A. As we said, they started with a very nice randomization of
7 their sample. Not only was the sample itself generated
8 randomly, but then they implemented it through random calls to
9 these phone numbers.

10 They did that seven days a week, they did that over a
11 period of, I believe, about five weeks in the field, and they
12 did multiple callbacks to respondents. And these principles
13 helped ensure that there was no bias or resulting problems with
14 the sample.

15 Q. Was the survey offered in languages other than English?

16 A. Yes, it was.

17 Q. What languages was it offered in?

18 A. The survey was offered in, in addition to English and
19 Spanish, in Mandarin, in Cantonese, in Korean, and Vietnamese.

20 Q. How was the raw data from the survey given to you?

21 A. I received, at the end of the project, a single raw data
22 file from Pacific Market Research that contained the answers to
23 all of the survey questions for all of the respondents.

24 So in this case, it was essentially a spreadsheet that was
25 6,309 rows from top to bottom, and then each of the columns

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1 were the different survey answers.

2 Q. Did you rely on the underlying data in forming your
3 opinions in this case?

4 A. Yes, I did.

5 Q. Did you provide this data to defendants?

6 A. Yes, I did.

7 MS. FIDLER: Your Honor, the underlying data file has
8 been identified as Plaintiffs' Exhibit 418. We agreed with the
9 defendants yesterday that because opening the file is a bit
10 difficult and would require specialized computers and software
11 licenses, as well as running additional cables, the defendants
12 would stipulate to the authenticity of the exhibit without
13 asking it be displayed in court.

14 We would move Plaintiffs' Exhibit 418 into evidence at
15 this time.

16 THE COURT: Any objection?

17 MS. BAILEY: Yes.

18 We don't think admission of this data is necessary,
19 but we wouldn't object for 703 purposes only.

20 THE COURT: All right. I assume there is going to be
21 a summary of the data pursuant to Rule 1006?

22 MS. FIDLER: Yes. We are offering the data pursuant
23 to Rule 1006.

24 THE COURT: I don't see any problem with it being
25 admitted into evidence. I can't imagine I will look at it

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1 myself, just giving you fair warning of that.

2 MS. BAILEY: I wanted to add that the underlying data
3 is hearsay, and we object on hearsay grounds.

4 THE COURT: I assume it is not being offered for the
5 truth, but I think survey data is not generally treated as
6 hearsay. I don't think that there is a valid objection there.

7 In any event, lets proceed.

8 MS. FIDLER: Thank you, your Honor.

9 BY MS. FIDLER:

10 Q. Dr. Barreto, did you conduct any weighting of the data?

11 A. Yes.

12 When the survey was complete and the data was sent to me by
13 the data collection agency, the first process is to take the
14 data and examine the demographic characteristics and to apply
15 what is called post-stratification weights to the data to
16 improve the representativeness of the dataset.

17 Q. Dr. Barreto, did you also provide that information to
18 defendants on how you weighted the data?

19 A. Yes.

20 The weights are described in the weight itself, which is a
21 unique value for each respondent is included in the dataset
22 that I turned over.

23 Q. Is that what you've referred to as the code script?

24 A. That is an additional file that we turned over. So there
25 is the dataset itself, the 6,309 observations, and then we also

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1 turned over our code and our script that we used to analyze the
2 data and all the instructions in terms of exactly how we
3 created every single table in our report.

4 Q. You relied on the code script in coming to the opinions in
5 this case?

6 A. Yes.

7 The code script was used explicitly to create all of
8 the tables that you see in the report.

9 Q. Did you produce the code script to defendants?

10 A. Yes.

11 MS. FIDLER: Your Honor, the code script has been
12 identified as Plaintiffs' Exhibit 419. We offer it into
13 evidence, with the similar caveat that it is difficult to pull
14 up, for the same reasons that the data is difficult to pull up.

15 THE COURT: Any objection?

16 MS. BAILEY: No objection as limited to 703 purposes.

17 THE COURT: All right. Admitted for that purpose.

18 (Plaintiffs' Exhibit 419 received in evidence)

19 MS. FIDLER: All right.

20 BY MS. FIDLER:

21 Q. Lets turn to the design of your survey questions.

22 I think the easiest way to do this is look at the
23 questionnaire itself and walk through it together.

24 Could we please call Plaintiffs' Exhibit 287, page 57.

25 Dr. Barreto, could you please identify this document?

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1 A. Yes.

2 This is appendix B from my initial report, which is
3 the telephone survey instrument. These are the set of
4 questions that were administered to the respondents.

5 Q. Is this an accurate copy of the questionnaire used in your
6 survey?

7 A. Yes.

8 Q. Did you rely on this in forming your opinions in this
9 matter?

10 A. Yes.

11 MS. FIDLER: Your Honor, we offer appendix B into
12 evidence.

13 THE COURT: All right. I think we should probably
14 mark this as a separate exhibit number.

15 MS. FIDLER: I think we are at 661.

16 THE COURT: I think 668 or 9.

17 668 I have.

18 MS. FIDLER: 669.

19 THE COURT: I don't think there is a 668.

20 Did I miss something?

21 MS. FIDLER: Are we at 668 then? I'm sorry.

22 THE COURT: All right. Any objection to this being
23 admitted as Plaintiffs' Exhibit 668?

24 MS. BAILEY: No objection, your Honor.

25 THE COURT: Did I miss a 668?

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1 Do you want to make it 669?

2 MS. FIDLER: Is it 669? I'm sorry.

3 669. Thank you.

4 THE COURT: All right. It is admitted as 669.

5 MS. FIDLER: Thank you, your Honor.

6 (Plaintiffs' Exhibit 669 received in evidence)

7 BY MS. FIDLER:

8 Q. Lets start with the first set of questions. These are
9 labeled on the first two pages SCR1 through SCR8.

10 Could you please explain what these questions mean and what
11 their purpose is?

12 A. Yes.

13 When we start a survey, typically the first questions are
14 referred to as screening questions. These are questions that
15 serve to both screen the eligibility of the participants, as
16 well as to help classify the participants into different
17 samples in different portions of the survey.

18 Q. What types of demographic information are collected?

19 A. Here, we are, you know, identifying the language that the
20 survey was conducted in, we are screening to ensure that we are
21 talking to a person over the age of 18 who is an adult, we are
22 screening them for their race and ethnicity, so that we can
23 correctly classify the respondent's state in the case, some of
24 the state oversamples, county, and then finally zip code.
25 Again, just to provide the information to allow to correctly

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1 classify the respondent and understand their characteristics.

2 Q. Turning to the main body of the survey, lets take a look at
3 questions one and two.

4 What are these questions and what is the intent behind
5 them?

6 A. So after the screening questions, these are then the first
7 two substantive questions on the survey that are intended to
8 evaluate the impact of the citizenship question on the 2020
9 census.

10 So the first question describes generally the census
11 process. It indicates that the census is conducted every ten
12 years, that it is required for households, that the census is
13 required to keep the information confidential. But in question
14 one, we don't identify the citizenship question as being
15 present. So this first question I used to establish my
16 baseline participation rates in the census.

17 Then the second question there under it is the direct
18 followup to ask people whether or not they would continue to
19 participate in the face of a new question that would require
20 them to list their citizenship status of all household members.

21 Q. And what are you measuring between one and two?

22 A. So by focusing on questions one and two, it allows us to
23 evaluate at the individual level, how many people say they will
24 respond to a census without citizenship, but then change their
25 mind and no longer want to respond to a census with citizenship

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1 questions. This is what I referred to as the dropoff rate or
2 the nonresponse rate.

3 Q. Who did you consider to be a nonrespondent?

4 A. Well, it is important to note at the outset that most of
5 the analysis throughout the report is really focusing in on
6 people who start out by saying yes on question one. They said
7 yes, I will participate.

8 We know from the general research, including the published
9 reports by the census, that lots of people don't respond and
10 are not self-responders to the start of the census. So I've
11 excluded those people from my analysis, and I'm just focusing
12 in on the people who say yes, I will respond to the census, and
13 so they've already given that affirmative answer.

14 Then looking at question two, I consider anyone who did not
15 say yes. They just said yes literally seconds ago. Now people
16 who did not say yes, they say they won't participate anymore,
17 and I consider those nonresponders.

18 Q. Lets move to the next few questions.

19 Lets take a look at question three. What is question three
20 asking and the relevance of it?

21 A. Question three was an effort to provide information to the
22 respondent about the confidentiality of the census and to
23 assess one of the key findings in the literature review, which
24 found that people may not trust the census to protect their
25 personal information.

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1 So here we stated that, quite clearly, that it is against
2 the law for the Census Bureau to disclose, make public, or
3 share with anyone, including other federal agencies, the
4 personal information collected from anyone, including their
5 citizenship status. We went on to say, according to law, the
6 Census Bureau can only disclose information gathered in the
7 census for the purpose of conducting statistical counts.

8 So we wanted to establish that, to provide that information
9 to respondents, as the Census Bureau will be providing that
10 information to respondents as well. But the literature review
11 suggested, as well as the self-reports and studies by the
12 Census Bureau, that they were finding a lot of people who
13 didn't know this or believe this. They were very worried about
14 the sharing of data, I believe was the phrase used in the
15 census report.

16 So in this particular question, after establishing that the
17 census cannot legally disclose, we asked people whether or not
18 they believed that. Do they trust the Trump administration to
19 protect your personal information, including the citizenship of
20 you and your household members, and that people could either
21 answer by saying yes, I trust them, or I think they will share.

22 Q. Lets turn to questions four through six.

23 Why did you ask questions four through six?

24 A. These are additional questions that the census will be
25 asking related importantly to household size as well as age of

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1 household members. So here, we found this to be a critical
2 piece of information in trying to understand who might respond
3 and who might not respond. In particular, it was important for
4 our analysis of imputation and whether or not imputation would
5 be successful.

6 Q. Looking at questions seven and eight, please.

7 I notice at the beginning it says split A and question 8
8 starts with split B.

9 What is a split?

10 A. Here, at this point, respondents are either randomly split
11 into version seven of the question or version eight of the
12 question.

13 For the first part of the question, of the survey, the
14 screeners in questions one through six, all the respondents got
15 all of those questions in that order. At this point, they
16 essentially come to a fork in the road. The computer will
17 randomly assign respondents either into question seven or into
18 question eight.

19 This is referred to in the literature as a survey
20 experiment or randomized control trial, where we are completely
21 randomizing which condition you get put into so that all of the
22 other factors about respondents, the average age, their race,
23 their immigrant status, their gender, all of these other
24 factors are held constant and equal, and the only difference
25 between your responses to question seven or question eight are

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1 this idea of whether or not the census provides a citizenship
2 question or whether or not the census does not.

3 THE COURT: A few of these have indicated VOL in
4 parentheses.

5 Can you tell me what that means?

6 THE WITNESS: Yes.

7 Throughout the entire survey, if it says VOL, that
8 means volunteered. What that means is that the interviewer
9 does not read that out loud to the respondents as an option.
10 We attempt to get an answer from the respondents, but if the
11 respondent insists on saying, well, I don't know, or I don't
12 want to tell you, rather than stop the entire survey, we allow
13 the interviewer to punch in code 99 as a not responding to
14 that.

15 BY MS. FIDLER:

16 Q. What is the significance of this third series?

17 We had questions one and two in the beginning where you
18 asked the respondents the citizenship -- the question of
19 whether they would participate with or without a citizenship
20 question. You appear to be asking it again in this form.

21 What is the difference between what you are measuring
22 between questions one and two, and what you are measuring with
23 the split, the randomized control style in questions seven and
24 eight?

25 A. Questions one and two are very important for establishing

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1 just the baseline nonresponse rate. We can observe it at the
2 individual level because every respondent was given question
3 one and question two.

4 So I can observe at the individual level who changes
5 their mind and to what degree they are changing their mind.
6 So questions one and two provide us that important piece of
7 information.

8 When we get to questions seven and eight, we are doing
9 something slightly different. This is using a split sample
10 survey experiment or an RCT, a randomized control trial, to
11 really assess if the presence of the citizenship question is
12 actually causally related to response rates.

13 The first items, one and two, help us establish what the
14 rates might be. Again, as I said, every single person got both
15 of those questions. Here, we are randomly assigning people to
16 these and this gives us the ability to say, all other things
17 being equal, did the presence of this phrase, saying there will
18 be a citizenship question or there won't be, did that by itself
19 cause responses to go up or down.

20 Q. Lets look at the remaining questions on the survey.

21 I'm sorry. Lets look at question nine.

22 What is question nine?

23 A. Question nine was the last substantive question on the
24 survey in which, as a followup to the previous split sample, we
25 again wanted to assess and evaluate one of the findings in the

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1 literature, that people were reporting that they had concerns
2 specifically over immigration enforcement.

3 So here, we asked people whether or not they were concerned
4 or not concerned that their census information about
5 citizenship might be shared with immigration and customs
6 enforcement.

7 Q. I noticed that it says if respondent was assigned to
8 split A in question number seven.

9 Could you explain what that means?

10 A. Yes.

11 So this was a followup question just for those respondents
12 in condition seven. We were particularly interested in looking
13 at those respondents because they were assigned into a scenario
14 in which we told them that there would not be a citizenship
15 question.

16 So now we wanted to evaluate whether or not those
17 respondents had concerns or not when we told them that there
18 now would be a citizenship question. So this was keeping with
19 social science theory, this would be the group that we were the
20 most interested in observing how and what sort of concerns they
21 might have.

22 Q. And lets turn to the remaining questions of the survey.

23 Last couple pages. I think that is pages 61 and 62.

24 What were the remaining questions on the survey as a
25 category?

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1 A. The final questions were demographic questions, for
2 example, national origin ancestry for the Latino and Asian
3 American population. We asked people place of birth, place of
4 birth of their parents, their age. And so just general
5 demographic questions that would help us classify the
6 responses, and also make sure that the data were representative
7 of the larger population.

8 Q. Dr. Barreto, we are going to discuss several tables and
9 figures taken from your expert report in this case.

10 Where does the data for all of these tables and figures
11 come from?

12 A. All of the tables that I produce are from the underlying
13 dataset of the 6,309 respondents, and so in preparing those
14 tables, I relied on this underlying data. There are one or two
15 tables where I also have an extra column of, perhaps, an
16 external data source, and that is typically census data, and I
17 note that in footnotes.

18 Q. Are the tables that we are going to discuss an accurate
19 summary of that data with regard to the analyses presented in
20 those tables?

21 A. Yes, they are.

22 Q. Lets start with table three, which is page 39.

23 OK. What is this table analyzing?

24 A. Table three is the first estimate of what the potential
25 dropoff rate will be due to the 2020 addition of a citizenship

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1 question.

2 Here, I am just looking at the change in answer from
3 question one to question two at the top of the survey. Again,
4 I am restricting the analysis to only people who said yes on
5 question one, that they would participate in the census, but
6 then they changed their answer. They are no longer
7 participants, so this summarizes what those rates of dropoff
8 will be.

9 Q. Can you just remind us again what the Q1, Q2, what the
10 Q1/Q2 analysis is?

11 A. Yes.

12 So now it is here on the screen directly above, and so
13 what this table does is it takes -- we explain to people what
14 the census was, we summarized it for them, and we then asked
15 them if they would participate at question one.

16 And then at question two, there is what is considered
17 a followup question, where we asked them if they would
18 participate in the presence of a citizenship question.

19 And then this table below, table three, is reporting
20 the rates of people who said yes at question one, but they
21 changed their answer, and they no longer said yes at question
22 two.

23 So, for example, for the overall national population, you
24 can see that rate there is 7.139. That indicates that 7.14 is
25 the number I round to eventually. 7.14 percent of the overall

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1 population changed their answer and said they would not
2 participate in the 2020 census due to a citizenship question.

3 (Continued on next page)

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1 BY MS. FIDLER:

2 Q. And let's just walk through the table columns, starting
3 from left to right. What's the first column?

4 A. The first column provides that point estimate of
5 nonresponse or drop-off rate for many different populations in
6 the sample. So I just referred to the national drop-off rate
7 of 7.14, but I also report the rate by different racial and
8 ethnic subgroups in the survey. And so each row going down is
9 saying what is this group's nonresponse rate going to be?

10 Q. All right. Moving to the next column to the right?

11 A. Really, the next two columns can sort of be viewed
12 together, where they say lower and upper. Those are directly
13 related to the estimate. It gives the 95 percent confidence
14 band around the estimate. So the lower band tells us that this
15 rate of 7.14, statistically it could be as low as 6.3 or as
16 high as 7.97. We have the most confidence in the estimate.
17 That's the midpoint. So we believe the 7.14 number is, the
18 estimate, is correct. But statistically it's somewhere in
19 between 6.3 and 7.97, given the sample and the respondents.

20 Q. What does the SE column stand for?

21 A. That is the standard error on the estimate, and that is
22 useful for, exactly for generating these upper and lower
23 bounds. It's telling us how much variance there is in the
24 response.

25 Q. And finally, the sixth column?

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1 A. The last column reports the degree of statistical
2 confidence that we have in the estimates. These are commonly
3 reported either, as I have here, as 99.9 confidence, or
4 sometimes you see the inverse of that, where it says .000.
5 There's really the same effect, and the question is to what
6 degree of statistical confidence do we have that these results
7 are real and that they're different from zero? And so you can
8 see there, for the estimates, we have a very high degree of
9 statistical confidence in these point estimates of nonresponse.

10 Q. And you've walked through the national results. Please
11 explain the effect of the citizenship question in Q1, Q2 on the
12 subpopulations, and let's start with the Latino population.

13 A. Yes. So, the third row down there is the estimated
14 nonresponse follow-up rate for Latinos, and the estimated rate
15 is 14.1 percent. That's indicated in the estimate column with
16 a lower bound of 11.9 and an upper bound of 16.3. That is the
17 highest estimated drop-off rate of any racial or ethnic group
18 in the data set, and it is also statistically different for
19 non-Latinos, that group just directly above, which is everyone
20 else in the sample. And so one of the conclusions of this
21 table is that Latinos will, in fact, be disproportionately
22 affected by this, by having a higher drop-off rate.

23 MS. FIDLER: Your Honor, we move table 3 into evidence
24 as Plaintiffs' Exhibit 670.

25 THE COURT: Any objection?

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1 MS. BAILEY: No objection.

2 THE COURT: Admitted.

3 (Plaintiffs' Exhibit 670 received in evidence)

4 MS. FIDLER: Thank you.

5 Let's turn to table 4 on that same page.

6 THE COURT: Before you do that, can I just ask a
7 question.

8 Given your experience and expertise, if you'd pull
9 that back up, you'll notice, I was struck that the percentage,
10 the estimate for the U.S.-born --

11 MS. FIDLER: Can we go back.

12 I'm sorry, your Honor. This is the next table, so
13 let's go back to table 3. I assume that's what you wanted to
14 ask about.

15 THE COURT: Thank you.

16 I notice that the estimate for U.S.-born under both
17 Latino and Asian is actually higher than the drop-off estimate
18 for foreign-born. Do you have an opinion of why that might be?

19 THE WITNESS: Yes. The first thing to note is that we
20 would technically refer to these estimates as indistinguishable
21 from each other because they're so close. The 13.7 and 14.4,
22 when you take the lower and the upper confidence bands into
23 account, they're pretty similar. So we would say they're
24 probably about the same, is how we would describe them, which
25 that in and of itself might still raise the same question. And

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1 the reason I think this is happening is something I summarized
2 earlier, which is consistent with the literature, that it's not
3 just immigrants themselves but also those in the larger
4 immigrant community, in particular, the second generation,
5 children of immigrants, who express equal or even in some cases
6 higher levels of anxiety over immigration enforcement actions
7 often through the lens of their parents. So some of the both
8 quantitative and also qualitative sociological work that I
9 reviewed in the literature review talks about how
10 U.S.-born Latinos have a higher expectation of civil rights and
11 citizenship, because they're American citizens, but then they
12 view these actions as particularly worrisome when they're
13 directed at their parents. And so we have seen that not just
14 in this survey but in some of the other published studies in
15 this study of immigrants.

16 THE COURT: Thank you.

17 MS. FIDLER: Let's turn to table 4. And can we pull
18 up the comparison just for a moment.

19 Q. Again, this is looking at the drop-off from Q1 to Q8,
20 correct?

21 A. Yes, that's correct.

22 Q. And it appears that the drop-off rate from Q1 to Q8 is even
23 higher than in Q1 to Q2, correct?

24 A. Yes, that's correct.

25 Q. Can you walk through that and let's start at the national

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Barreto - Direct

1 level?

2 A. Sure. Let me just make sure it's clear in what this table
3 is reporting.

4 I was able to look at the individual level of how someone
5 changed their answer from Q1 to Q2, and I can also do that for
6 question 1 to question 8. And so for the people who were put
7 into that question 8 split sample and asked again about
8 participation, we can see how many of them originally said yes
9 and then changed their mind and no longer said yes when
10 presented with this question 8. And nationally, we report that
11 the original estimate was 7.14, is now grown and is 9.69.
12 Likewise, the Latino estimate had been 14.1, and it now grows
13 to 16.58. And so we're seeing evidence here of increased
14 nonresponse after further inquiry from us.

15 And I'll talk about, later, how this is an example of a
16 follow-up question attempting to go back to respondents and
17 request their participation a third time. But I think what's
18 happening here is that the more exposure people have to the
19 census and what's going to be taking place in 2020, the more
20 that they think about that, we see a slight increase in the
21 apprehension or anxiety in wanting to participate. And so
22 while it may seem surprising, it's actually consistent with the
23 social science literature, as we spent some time talking about,
24 that the more people learn and are exposed to it, they may
25 actually become more anxious and nervous about participating.

Ib9Wnys4

Barreto - Direct

1 Q. Does the fact that this was a random split sample influence
2 the results, in your opinion?

3 A. Well, what it does is -- first of all, you'll note that the
4 standard error column gets slightly larger for all of the
5 categories, and that's because we only have half of the data.
6 Half of the respondents were split into question 7, and they
7 were told that there would be a census without a citizenship
8 question. So here, I'm only looking at half of the sample, so
9 that does give us less precision. Even though we only have
10 half of the sample, in some ways it will make it harder for us
11 to find these effects, so the fact that they persist and the
12 fact that they get larger, I think, is very compelling evidence
13 that there will be a drop-off and that the longer people are
14 thinking about the citizenship question on 2020, the more
15 likely they may be to want to participate.

16 THE COURT: Just to clarify, question 8 was asked only
17 of people who answered yes to question 1?

18 THE WITNESS: No. Question 8 was asked to half of the
19 entire sample. What I'm summarizing is the difference between
20 people, so that 9.69 means 9.69 percent said yes to question 1
21 but then they changed and said no or refused to question 8. So
22 everyone was asked of it, but I'm just attempting to look at
23 the people who are dropping out.

24 THE COURT: Thank you.

25 MS. FIDLER: Your Honor, at this time we move table 4

Ib9Wnys4

Barreto - Direct

1 into evidence as Plaintiffs' Exhibit 671.

2 THE COURT: Any objection?

3 MS. BAILEY: No, your Honor.

4 THE COURT: Admitted.

5 (Plaintiffs' Exhibit 671 received in evidence)

6 MS. FIDLER: Thank you.

7 Let's turn to the trust question at questions 3 and 9,
8 and let's start with table 8 on page 44 of the report.

9 Q. What is table 8 analyzing?

10 A. Table 8 is presenting the results of the answers to
11 question 3 that we've reviewed earlier.

12 There it is. Question 3 was a question asking people,
13 after telling them and giving them assurances of, that their
14 information would not be shared, that it was against the law
15 for the census to reveal or share this information, we then
16 wanted to check many of these factors that had been popping up
17 in census research and in the academic literature of trust, and
18 so we directly asked people whether or not they trusted the
19 administration to protect their personal information. And
20 table 8 summarizes the results of the entire sample, of
21 everyone, across different racial and ethnic groups.

22 Q. And could you walk us through this table, starting from
23 left to right again?

24 A. Yes. So, the first column there that says total is the
25 overall national sample of all people in the sample and what

Ib9Wnys4

Barreto - Direct

1 their degree of trust is and what their degree of concern, or
2 where it says "I think they will share," that's response option
3 No. 2. And so overall, for the entire national sample, there's
4 about equal percentages. 42 percent trust the administration
5 to share -- excuse me, to protect their information. And 43
6 percent do not trust. They believe that the administration
7 will share their information.

8 So then I have those same results, trust versus share for
9 whites, Latinos, African Americans, Asian Americans, and other.
10 So you can compare and see how across different racial and
11 ethnic groups, what is their view, what is their perception of
12 the ability of their information to be protected.

13 Q. What conclusions do you draw from these results?

14 A. Well, first, there is widespread belief that the
15 information will be shared. Even after directly telling
16 respondents that it is against the law for information to be
17 shared from the Census Bureau, a very large percent of
18 respondents believe that it will, in fact, be shared, and so
19 that's significant. This corroborates many of those fears that
20 the Census Bureau themselves were finding in this so-called
21 unusual behavior. This rate is higher among racial and ethnic
22 minorities. In particular among Latinos and African Americans,
23 for Latinos, 31 percent trust compared to 47 percent don't
24 trust. And likewise, for African Americans, there's a
25 significant trust deficit on this item.

Ib9Wnys4

Barreto - Direct

1 Q. Do you have statistical confidence in the results of this
2 table?

3 A. Yes, these results are based on the entire sample of over
4 6,000 respondents and are statistically reliable.

5 MS. FIDLER: Your Honor, we move table 8 into evidence
6 as Plaintiffs' Exhibit 672.

7 THE COURT: Any objection?

8 MS. BAILEY: No objection.

9 THE COURT: Admitted.

10 (Plaintiffs' Exhibit 672 received in evidence)

11 MS. FIDLER: Thank you.

12 Let's take a look at table 9 on page 44, please.

13 Q. What results are reflected in this table?

14 A. In table 9, we're continuing to look at the trust question,
15 only in this case I have limited the respondents to just those
16 people who say they're not going to respond to the census
17 either because, at Q1 to Q2, they changed their mind and said
18 no, I'm not going to respond or because they gave us a "no"
19 answer at question 8. And there's question 8.

20 And so in this case, what you can see is that among the
21 nonresponders, there is even larger concern that their
22 information will be shared. These are people who said --
23 remember, they originally said yes, I will participate in the
24 census at question 1, and then at question 2 they said no, I'm
25 not going to participate. And I wanted to understand, what

Ib9Wnys4

Barreto - Direct

1 were those particular respondents' views, perceptions of trust?
2 And so overall, 78.9 percent of nonresponders say that they
3 think the information will be shared, and among those people
4 who gave us a "no" answer on question 8, an even larger, almost
5 unanimous, 98.7, percent think that the information is going to
6 get shared. And so this perception is very real among
7 nonresponders, and that is a real concern that this census
8 report from November of 2017 that we discussed earlier
9 uncovered. This is now corroborated by thousands and thousands
10 of interviews.

11 THE COURT: And column 1 is people who answered no to
12 question 2?

13 THE WITNESS: That's correct.

14 MS. FIDLER: Your Honor, I move table 9 into evidence
15 as Plaintiffs' Exhibit 673.

16 THE COURT: Any objection?

17 MS. BAILEY: No, your Honor.

18 THE COURT: Admitted.

19 (Plaintiffs' Exhibit 673 received in evidence)

20 MS. FIDLER: Thank you.

21 Let's turn to table 10 on page 45.

22 Q. What is the source for the data on this table?

23 A. Table 10 is also based on the underlying survey of 6,300
24 respondents. Here, I'm analyzing question 9. Question 9 was
25 the last substantive question on the survey, which asked people

Ib9Wnys4

Barreto - Direct

1 very specifically if they had concerns over their information
2 being shared with Immigration and Customs Enforcement.

3 Q. And again, could you walk us through the table, again,
4 moving from left to right?

5 A. Yes. In this instance we have confined the results to just
6 the nonresponders. I believe this is the population of most
7 interest, the people who say that they do not want to take the
8 census with a citizenship question. Among nonresponders, the
9 first column, total, is for the overall national population,
10 all nonresponders, and I have totaled the percentage of people
11 who say "very concerned" and "somewhat concerned" to indicate
12 how many are concerned about their information being shared
13 with Immigration and Customs Enforcement, and you can see
14 overall that rate is 64 percent, there at the bottom. And then
15 each subsequent column, similar to the last table we reviewed,
16 has that same information for nonresponders of different racial
17 and ethnic groups.

18 Q. And how does this table inform your opinions?

19 A. Well, it indicates to me that among people who are not
20 planning to respond to the census, they have very high
21 concerns. In the case of those who are immigrants, the final
22 column to the right, 78.5 percent are concerned that their
23 answers to the citizenship question will be shared with
24 Immigration and Customs Enforcement. This is consistent across
25 the Latino and Asian-American community as well, the two

Ib9Wnys4

Barreto - Direct

1 largest immigrant communities in the United States. And so
2 this reveals that those concerns that we were hearing about
3 are, in fact, concerns that nonresponders have; that they
4 believe, even after we had told them previously in the survey
5 that it's not possible to share, they believe that the
6 information is going to be shared, and they are concerned that
7 it will be shared with Immigration and Customs Enforcement.

8 MS. FIDLER: Your Honor, we move table 10 into
9 evidence as PX 674.

10 THE COURT: Any objection?

11 MS. BAILEY: No objection, your Honor.

12 THE COURT: Admitted.

13 (Plaintiffs' Exhibit 674 received in evidence)

14 BY MS. FIDLER:

15 Q. Did you estimate the potential number of nonresponders that
16 would result because of the citizenship question?

17 A. Yes, I did.

18 Q. Let's walk through those results.

19 MS. FIDLER: Let's pull up table 5.

20 Q. What are the source data for this table?

21 A. So, the estimate and the household size, those come from my
22 underlying survey data. The total households, in the middle,
23 that comes from the census current population survey.

24 Q. And what is table 5 measuring?

25 A. Table 5 is attempting to give us a number of the total

Ib9Wnys4

Barreto - Direct

1 number of people, not just households but people, who will be
2 impacted by the nonresponse to the citizenship question, who
3 will then have to be added to the nonresponse follow-up, the
4 proxy, the imputation, everything else. So this is a net
5 impact of additional people who will be missed.

6 Q. And can you walk us through the results of this table?
7 Again, I think we understand the left is the demographic
8 categories. Can you walk us through the national results,
9 going from left to right?

10 A. Yes. We'll start with just the national. So, the first
11 column that says estimate, this is 7.14 number that I referred
12 to earlier in table 3. That was the percentage of all national
13 households that will not respond. The next column, 3.2, that
14 is the average household size of nonresponding households in
15 the national population. The third column there is the total
16 number of households according to the 2016 CPS. And so if
17 there's 125 million households and 7 percent of them are not
18 going to respond and in those households they have an average
19 of 3.2 people, that gets us to the total impacted number, which
20 is 28.7 million nationally. The number of households impacted
21 would just simply be 7.14 times 125 million, but what I'm
22 looking for is also those individuals inside the households,
23 and that's why I multiply it by 3.2, which is the average
24 household size.

25 Q. Just to clarify, where did you get the household size

Ib9Wnys4

Barreto - Direct

1 information?

2 A. The household size information comes from our survey,
3 because that's one of the questions that we ask; I believe it
4 was question 4, asking what is your total household size, how
5 many total people live there?

6 Q. And can you walk us through the result for the Latinos
7 column -- row? Sorry.

8 A. Yes. So, just below the national results, I have the
9 results there for Latinos. Again, that first number is one
10 we've already reviewed, a national nonresponse drop-off rate of
11 14.1. You'll also note that Latino households which are not
12 responding are larger in size, 4.31 persons; they have larger
13 household sizes, especially among nonresponding households.

14 There are 16 million, roughly, Latino households in the
15 United States, according to the census CPS, and that represents
16 13 percent of all households in the United States at the time
17 of this census, 16 million households over 125 million
18 households. But what we see in the total-impacted column is
19 that because of a higher nonresponse rate, 14 percent, and
20 because of a larger household size, the total net impacted, the
21 people who are going to be nonincluded in the self-response, is
22 10.1 million in the Latino community. And that represents a
23 sizable share of that 28 million of the overall. In fact, it
24 represents 35 percent of all people who will not be counted in
25 the self-response. So while they represent 13 percent of

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Barreto - Direct

1 households, I'm estimating they'll represent 35 percent of all
2 those who are excluded, and so it's evidence of this net
3 differential effect in Latino communities.

4 MS. FIDLER: Your Honor, we offer table 5 into
5 evidence as Plaintiffs' Exhibit 675.

6 THE COURT: Any objection?

7 MS. BAILEY: No objection, your Honor.

8 THE COURT: Admitted.

9 (Plaintiffs' Exhibit 675 received in evidence).

10 MS. FIDLER: Let's take a look at table 6.

11 Q. And what does this table show?

12 A. Table 6 is showing very similar information to table 5.
13 The rows and columns all contain the same type of information.
14 The only difference is that I'm using my second calculation of
15 the change in response rate from question 1 to question 8. And
16 as we discussed earlier, we're anticipating a larger
17 nonresponse there, and so the total-impacted column goes up to
18 35 million, there at the far end of the screen, and the total
19 Latino impacted goes up to 11 million. Otherwise, it's
20 presenting the same type of information as table 5, attempting
21 to give an estimate of the number of people -- not just
22 households but the number of people -- who will be missed in
23 the self-response and require further follow-up if they're to
24 be counted.

25 MS. FIDLER: Your Honor, we offer table 6 into

Ib9Wnys4

Barreto - Direct

1 evidence as Plaintiffs' Exhibit 676.

2 THE COURT: I assume no objection.

3 MS. BAILEY: Correct, your Honor.

4 THE COURT: Admitted.

5 (Plaintiffs' Exhibit 676 received in evidence)

6 MS. FIDLER: Thank you.

7 Q. Let's talk about how nonresponse follow-up fits into your
8 survey. Did your survey assess the potential success of
9 nonresponse follow-up?

10 A. Yes, it did.

11 Q. In what way?

12 A. The survey looked at, I believe, two components that
13 directly touch on nonresponse follow-up. One is the issue of
14 trust and confidence that we've already been discussing. This
15 will be critical to an accurate nonresponse follow-up, to have
16 the trust and confidence of participants. And so in the slides
17 we just reviewed, the fact that there is considerable mistrust
18 and a lack of confidence indicates to me that nonresponse
19 follow-up will not be effective.

20 The second component of the survey that looked at
21 nonresponse follow-up is analysis of questions 7 and 8, the
22 split-sample experiment that we discussed. In many ways, this
23 was designed not just to be an RCT experiment but also to serve
24 as a follow-up question, because we already asked their
25 participation rates at question 1 and question 2, and now we

Ib9Wnys4

Barreto - Direct

1 are following up yet again with more information and attempting
2 to see whether or not people will respond. So I could use the
3 analysis of questions 7 and 8 to observe expected NRFU success.

4 Q. Let's take a look at table 7 on page 40 of your report.

5 This is Plaintiffs' Exhibit 287. What does this table show?

6 A. Table 7 is showing how many nonresponders at the start of
7 the survey, the people who started out as a "yes" but then they
8 changed to "not yes" on question 2 -- they're not going to
9 respond -- how many of them changed their answer and became a
10 responder at question 7 or question 8.

11 It's important to note, as I highlighted here on the
12 screen, that we provided additional assurances, just like the
13 NRFU process will, and we told people at questions 7 and 8 that
14 the government will provide assurances that your information
15 will be kept confidential and only used for purposes of
16 counting the total populations. So what I can observe then,
17 looking at table 7, is how many people changed their mind and
18 say yes, I will participate in the census when the citizenship
19 question's present or when the citizenship question is not
20 present.

21 Q. And can you walk us through the results of this analysis?

22 A. Yes. So, looking at table 7, the first row says "Q8 yes
23 with citizenship." So this is the percent of respondents who
24 said yes to question 8 in the condition where we told
25 respondents there would be a citizenship question, and that

Ib9Wnys4

Barreto - Direct

1 indicates that 45.2 percent of the overall sample, who were
2 originally nonresponders, said yes, I will do the census. But
3 directly under that is the people who were randomized into
4 question 7. And for question 7, they were told that there
5 would be a census but there would be no citizenship question
6 asked. And there we found that 84.3 percent of people, who
7 originally started out as nonresponders, changed their mind and
8 said that they would take the census. And that rate is roughly
9 in line with the census's own estimate of between 80 and 90
10 percent success of the NRFU process.

11 And so what we found very clearly there, that difference
12 column at the bottom, is that when confronted with the
13 citizenship question, there will be a significant deterioration
14 in NRFU, and we estimate a negative 39 percent differential
15 between the two conditions of nonresponders.

16 Q. And how does this play out in subpopulations, if you look
17 to the right?

18 A. Well, in particular, the Latino population is estimated to
19 have a 10-point lower response rate to nonresponse follow-up,
20 38.9 percent compared to 49.5 percent for whites, that column
21 just immediately to the left. So even in instances where
22 nonresponse follow-up does include some people, the results
23 will be weaker in the Latino community and will result in, and
24 continue to expand, the net differential in terms of how people
25 are counted.

Ib9Wnys4

Barreto - Direct

1 Q. How does this table fit into your conclusions regarding
2 effectiveness of NRFU?

3 A. I think this table is very clear evidence that in the
4 presence of a citizenship question, significantly less people
5 are going to participate in the NRFU. People were randomized
6 into these two conditions. Everyone in this table is a
7 nonresponder at question 2, so they said I don't think I want
8 to respond to the census. But then on follow-up, 84 percent
9 said yes when the citizenship question was gone, but only 45
10 percent when it was present. It's very clear evidence that
11 NRFU will not work as well in 2020 as in previous years.

12 MS. FIDLER: Your Honor, plaintiffs move table 7 in as
13 Plaintiffs' Exhibit 677.

14 THE COURT: Any objection?

15 MS. BAILEY: No, your Honor.

16 THE COURT: Admitted.

17 (Plaintiffs' Exhibit 677 received in evidence)

18 BY MS. FIDLER:

19 Q. This analysis, this table 7, is different from actual NRFU,
20 though, correct?

21 A. Yes. This is what I would describe as a simulation, or an
22 approximation.

23 Q. And so can you explain why you think this simulation is an
24 appropriate indication of how NRFU will perform?

25 A. Well, the entire survey that I've implemented here is what

Ib9Wnys4

Barreto - Direct

1 I'm considering an evaluation. The survey is not meant to be a
2 direct replica of the decennial census. It's meant to evaluate
3 how effective it will be, and so here, we have many of the same
4 principles that will be present in NRFU. We are following up
5 and asking people yet again if they will participate, after
6 originally giving us an answer of no. We are providing
7 additional assurances. We're describing that the government
8 will assure you that your information will be confidential.
9 And so it approximates the same spirit of exactly what NRFU is
10 going to be doing, doing follow-up visits and providing these
11 assurances. And so from that perspective, it allows us to
12 observe how NRFU might work under a citizenship-question
13 scenario and how it might work under a noncitizenship-question
14 scenario.

15 Q. Now, unlike the census, there's no communication or PR plan
16 associated with your survey questions, correct?

17 A. That's correct.

18 Q. Is this census context distinguishable on that basis?

19 A. I don't understand.

20 Q. Does the -- the Census Bureau has a communications plan,
21 correct?

22 A. Yes, that's right.

23 Q. And do you think that the context of that, having that
24 communications plan, makes it different from what you're doing
25 here?

Ib9Wnys4

Barreto - Direct

1 A. No.

2 MS. BAILEY: Objection.

3 THE COURT: Is there an objection?

4 MS. BAILEY: Objection. Leading.

5 THE COURT: Overruled.

6 BY MS. FIDLER:

7 Q. Could you please explain the basis for your opinion?

8 A. Yes. So, the responses to the questions related to trust
9 and concern over data getting shared lead me to believe that
10 this is a very significant and serious problem and that we are
11 giving them multiple assurances. We told them at question 3
12 that it is against the law for the census to reveal any of your
13 information. Now we told them at questions 7 and 8 that the
14 government will give you these assurances that your information
15 is going to be kept confidential. So we have told them
16 multiple times that this information legally cannot be
17 revealed, and so that approximates the type of information that
18 the respondents will be hearing, and we're telling them this in
19 a short amount of time, so it's clear that they are, that this
20 information is registering. And I believe that this continues
21 to show this major gap between 84.3 and 45.2 effectiveness
22 rate. So I think it does offer some very important clues as to
23 whether or not NRFU will be as successful in 2020 as in
24 previous years. If it were, those rates would be exactly the
25 same in this table.

Ib9Wnys4

Barreto - Direct

1 Q. Are your findings consistent with the social science review
2 that you conducted?

3 A. Yes. This is a direct corroboration of that. The social
4 science research specifically about NRFU suggested, including
5 the Brown paper, that the effects of the citizenship question
6 would remain and would make the NRFU process harder, and that's
7 exactly the type of evidence that this table reports.

8 Q. Your survey indicates that nearly 40 percent of the initial
9 nonresponding Latinos will respond with some reassurances,
10 correct?

11 A. Yes. We report here that 38.9 percent who were initially
12 not responders changed their mind and became responders.

13 Q. And you've discussed earlier that the Latino and immigrant
14 communities have a history of distrust of the federal
15 government and the current climate is making things worse. Is
16 it possible that these communities would refuse to take the
17 census regardless of the citizenship question in light of your
18 survey results?

19 A. It's important to note that all of the analysis that I'm
20 reporting on are people who initially said yes at question 1,
21 so there are additional people who did not say yes to question
22 1 who, maybe, are nervous about taking the census no matter
23 what. The de la Puente census reports that I referred to
24 before earlier did, indeed, conclude that trust is a common
25 issue in the Latino and immigrant community. But in this

Ib9Wnys4

Barreto - Direct

1 analysis, I am restricting it to people who said yes, I will
2 participate in the census but then they changed their mind when
3 told about the citizenship question. And so there are going to
4 be other potential issues. Here, I'm just attempting to
5 quantify with evidence those who are changing as a result, and
6 therefore, I conclude that this will have an effect.

7 MS. FIDLER: And let's take a couple additional tables
8 on this slide, table 11 on 46.

9 Q. What does table 11 show?

10 A. So, table 11 is somewhat similar to the last table we just
11 looked at, where we were looking at your initial answer at the
12 start of the survey and how that changed.

13 I prepared this table because as we looked at the increased
14 overall nonresponse at question 8, we wanted to understand why
15 the nonresponse, which had been 14 percent in the Latino
16 community, went up to over 16 percent the second time we asked.
17 We know that some people did change their mind and say they
18 would respond through the NRFU process, and so I wanted to
19 paint the entire picture of what was happening from the start
20 of the survey by the time we got to question 8.

21 So in this table, the two columns at the top represent your
22 initial starting point to the survey. On the left it says
23 "will respond, Q1 'yes,' Q2 'yes.'" These are people who, at
24 the start of the survey, out of the gates, they said yes, I
25 will take the census and yes, I'll will stick with the census

Ib9Wnys4

Barreto - Direct

1 with the citizenship question.

2 The second column, next to it, that says "won't respond,"
3 these are the ones that we've been focusing most of the
4 attention so far in the tables. These are our nonresponders.
5 Then what I'm curious about is how all of them, not just the
6 nonresponders but even some of the ones who initially were
7 planning to respond, did any of them change their mind the
8 longer the survey went on. And that's what's reported here in
9 these cells.

10 And so the cells that are particularly important are cells
11 (b) and (c). And I'll start with cell (b). Cell (b) here
12 reports out of the entire survey what percentage of people
13 originally started as a "no" but by the time it got to NRFU
14 they changed and became a "yes," and that represents 3 percent
15 of the overall, entire sample. However, in cell (c,) what we
16 found was that there was actually a larger number of people who
17 initially started out as a potential "yes"; they said yes, I
18 will respond, but by the time it got to question 8 and they had
19 heard more about the census and thought about it more, they now
20 changed and said no, I'm not going to respond, now that I think
21 about it more. And it's, in fact, twice as many people who
22 might get picked up successfully in the NRFU process; twice as
23 many, 6.1 percent, defected from their original answer and now
24 said I don't want to participate.

25 So this sort of tells the whole picture of what will happen

Ib9Wnys4

Barreto - Direct

1 the longer the census is in the field, the longer people are
2 talking about it, the longer there's more information, and it's
3 consistent with the social science literature that I reviewed,
4 which found that some people may grow suspicious of these
5 follow-up visits and of this additional information.

6 MS. FIDLER: Your Honor, we move table 11 into
7 evidence as Plaintiffs' Exhibit 678.

8 THE COURT: Any objection?

9 MS. BAILEY: No, your Honor.

10 THE COURT: Admitted.

11 (Plaintiffs' Exhibit 678 received in evidence)

12 MS. FIDLER: And let's take a look at table 12.

13 Q. What is the difference between tables 11 and 12?

14 A. Well, table 12 provides the same type of information,
15 showing your initial response at the start of the survey and
16 changing, but here I'm restricting it just for immigrants,
17 because our theory was that the immigrant community in
18 particular would be the ones that, as time wears on, as they
19 hear more about the census, would be the ones that would grow
20 more concerned and so I wanted to assess if that was the case.
21 Once again, the people in the first column, these are
22 immigrants who said yes on question 1 and yes on question 2, so
23 out of the gates they told us, I'll participate in the census.
24 But you can see there in cell (c) that 11 percent of the entire
25 sample are immigrants who were initially responders but then

Ib9Wnys4

Barreto - Direct

1 changed and became nonresponders the more they heard about and
2 thought about the census, and that that percentage, 11.2, is
3 over three times larger than the number of immigrants who might
4 get picked up in the NRFU process.

5 So I'm not saying no one will get picked up in the NRFU
6 process, but the more information is being pushed out, the more
7 people think about the census, in particular immigrants, this
8 table indicates that more people will get nervous and anxious
9 and become nonresponders, and it will actually outstrip the
10 number of people getting picked up by NRFU.

11 MS. FIDLER: Your Honor, we offer table 12 into
12 evidence as Plaintiffs' Exhibit 679.

13 THE COURT: Any objection?

14 MS. BAILEY: No, your Honor.

15 THE COURT: Admitted.

16 (Plaintiffs' Exhibit 679 received in evidence)

17 BY MS. FIDLER:

18 Q. Does the Census Bureau also have a communications plan to
19 try and address the decline in self-response to the citizenship
20 question?

21 A. Yes, they do.

22 Q. And are you familiar with the plan?

23 A. Yes.

24 Q. Do you have an opinion on whether this communication plan
25 will be successful in convincing communities affected by the

Ib9Wnys4

Barreto - Direct

1 citizenship question to participate in the 2020 census?

2 A. Yes. I do not believe the plan will be effective in 2020
3 as a direct result of the citizenship question being added to
4 the census.

5 Q. Have you prepared a slide summarizing your basis for that
6 opinion?

7 A. Yes.

8 MS. FIDLER: Please call up PDX 29.

9 Q. Is this that slide?

10 A. Yes, it is.

11 Q. Could you please explain what you mean in this slide?

12 A. So, the Census Bureau, as part of their communications
13 plan, plans to work with what they call trusted voices or
14 trusted partners, and my review of these trusted partners found
15 that many of the important trusted partners that the census has
16 identified are actually quite concerned and skeptical right now
17 of the citizenship question, and so rather than working arm in
18 arm, together, many of these trusted partners are right now
19 criticizing and in some case, some of them are parties to this
20 exact lawsuit challenging the census. And so this led me to
21 believe that they would not be as effective in getting the word
22 out in the community.

23 Q. And who are some of these partners you identified?

24 A. Well, on the screen, I identified some of the largest and
25 most important partners. In fact, these are the trusted

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1 partners that are specifically named in Dr. Abowd's disclosure
2 as people that the Census Bureau plans to work with. So the
3 first one is the National Association of Latino Elected and
4 Appointed Officials. They go by the acronym NALEO. And NALEO
5 indicated that the citizenship question would "have
6 catastrophic consequences and fan the flames of fear and
7 distrust in the census," and concluded that the census cannot
8 expect the trusted messengers like NALEO will do their job for
9 them.

10 We saw similar reactions from the National Urban League, a
11 large group that represents and works on behalf of African
12 Americans, who said that this was a tool to intimidate
13 undocumented immigrants from completing the questionnaire; saw
14 the same from the National Congress of American Indians, who
15 said that their group opposes the insertion of a citizenship
16 question in 2020 because they fear it could result in
17 undercounts in tribal communities. And all three of those
18 organizations are organizations that the census hopes to work
19 with and have been named as people who are in their
20 trusted-partners network.

21 Q. And what is the Leadership Conference?

22 A. The Leadership Conference is an umbrella organization that
23 represents many civil rights organizations, and they commonly
24 release joint press releases and statements on behalf of their
25 large community. And they said, in the strongest terms

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1 possible, they urge the census to remove the proposed
2 citizenship question.

3 So again, a common takeaway, and I reviewed this and
4 summarized it in my rebuttal report specifically, was that the
5 communications plan and the work with the trusted partners is
6 very tenuous at this point. The partners are very concerned
7 themselves about this, and it is not at all clear to me that
8 these trusted partners will be effective -- even if they do
9 work with the census, they will be able to convince people to
10 participate.

11 Q. Dr. Barreto, we've talked about the NRFU process and about
12 doing enumeration through administrative records and proxies.
13 What happens if, after all these processes, the Census Bureau
14 hasn't been able to enumerate a household?

15 A. Well, at the end of the day, if they have not been able to
16 enumerate a household, their final step is something that they
17 called imputation.

18 Q. And what is imputation?

19 A. Imputation is the process by which missing information,
20 where there is a hole in your data set and you try to fill it
21 in, you try to draw an inference, or you try to impute what is
22 missing by using information on responding units or other
23 information in your data set to try to fill in the patterns and
24 fill in the gaps and essentially put your best educated guess
25 of what is missing on the missing blank.

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1 Q. What types of survey data can be imputed?

2 A. Most of the literature on imputation focuses on what is
3 called item nonresponse or characteristic imputation. That's
4 the most common use of imputation, and what that means is that
5 one of my respondents in a survey I'm working on answered 30 of
6 my 31 questions, but when it came to question 31, typically a
7 question about how much money does your household make, that
8 respondent may not want to tell me. But I still may want to
9 rely on that. I may want to have a control for income in my
10 analysis, and so I use all of the surrounding information about
11 that particular respondent as well as adjacent respondents to
12 impute, to try to estimate, a guess of what that person's
13 income was based on all their other answers. And so that
14 missing-item imputation is the one where there is a more common
15 use and more common agreement on imputation working.

16 Q. And what is the second type?

17 A. The second type of imputation with respect to this issue,
18 in the census in particular, is what is commonly referred to as
19 whole-person imputation or missing-unit imputation. In this
20 example, rather than filling out 30 of my 31 questions, this
21 respondent refused to take my survey. They're completely
22 missing, I don't know anything about them, and now I have to
23 try to use adjacent units to tell me something about them, and
24 it's a much more difficult task. It's a much more complex
25 task, and it's one which, in the literature, there's far less

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1 agreement and belief that this is accurate.

2 Q. Is imputation something you normally do as part of your
3 survey research?

4 A. Yes, all the time.

5 Q. Why is whole-person imputation at the end of the census
6 process? Why is it the last step?

7 A. Well, it's the last step because it's sort of the last
8 resort, and it's known to be the least accurate. The census
9 themselves admit that the best quality data is from
10 self-response at the beginning of the survey. That is the best
11 way to get accurate information, and then all of these other
12 steps down the road are somewhat less accurate. And so the
13 final step, at the end of the day, you have 500,000 or 5
14 million households that didn't answer your census, they have to
15 provide some information on them. So the very final step is to
16 put in this imputation, this inference, based on surrounding
17 units.

18 Q. I believe you prepared a slide outlining some of the
19 conditions upon which imputation can be analyzed. Is that
20 correct?

21 A. Yes.

22 Q. Is this that slide?

23 A. Yes, that's right.

24 Q. Can you walk us through the first section here on
25 "whole-person imputation works better when"; can you explain

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1 what you mean here?

2 THE COURT: And for the record, this is PDX 30.

3 MS. FIDLER: Thank you, your Honor.

4 A. Yeah, so, at the top of this slide, I'm summarizing some of
5 the takeaways in the social science and statistics literature
6 on whole-person imputation. And what are some of the
7 underlying principles or assumptions that we want to be present
8 if, in fact, we're going to take that leap and do whole-person
9 imputation. And so here, there's three sort of major theories
10 or assumptions that need to be present.

11 The first is that the donor group is statistically the same
12 as the missing group. The donor group are the people who are
13 donating their information to help us guess the information
14 about the missing units, and we want those to be statistically
15 similar. We don't want them to be very different.

16 The second principle is that the missing group is
17 ignorable, and that essentially means that their missing-ness
18 is at random, that their decision to opt out and be missing in
19 my study is not correlated or associated with this variable of
20 interest.

21 Q. I'm sorry. Can you give an example?

22 A. Yeah. An example of ignorable missing-ness and
23 nonignorable missing-ness comes from a study of estimating the
24 rates of HIV in the sort of early years of the outbreak of this
25 disease, and there's a statistical study where there was an

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1 attempt to go and estimate what percentage of people might have
2 this virus. And they found that many people decided to not
3 participate in the study and give their answers, and so they
4 had a lot of missing cases. And they realized, through
5 follow-up and ethnographic work, that that missing-ness was
6 actually correlated with their variable of interest. It was
7 people who had the virus and felt a social stigma or other
8 reasons were not comfortable reporting that, and as a result,
9 they concluded that that type of missing-ness is not ignorable;
10 it was not random, and as a result, it created problems for the
11 imputation in that study.

12 Q. And let's talk about the third element you have here. What
13 do you mean by the missing group is randomly distributed?

14 A. So, ideally, when units are missing, as I just said, that
15 missing-ness is not correlated with some other known issue, but
16 instead, the missing-ness that you're left with at the end of
17 your studying is just missing and complete random. You have
18 one household on this block, seven blocks over you have another
19 household, somewhere else there's one apartment unit, that it's
20 just -- it's randomly distributed. It's not clustered and it's
21 not associated with some other variable. And those are the
22 sort of principles that, if you're going to go into this
23 complex business of whole-person imputation, you want to make
24 sure that these three assumptions are present.

25 Q. Have you prepared a figure explaining the missing, the

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1 random distribution?

2 A. Yes.

3 MS. FIDLER: Can we look at Plaintiffs' Exhibit 287,
4 figure 1.

5 Q. Dr. Barreto, can you please explain figure 1?

6 A. OK. So, this is just a basic attempt, because I know that
7 all of this is complex and involves a lot of statistical
8 assumptions and manipulations, and so this is a basic attempt
9 to say what is imputation? How does it work, and what factors
10 need to be present?

11 And so here, I'm attempting to explain how do we possibly
12 impute or understand what is missing in these blanks? And so
13 in panel A we have an example where the missing units are
14 random. There's -- they're not clustered, and they don't
15 appear to be associated with any other factor. Essentially in
16 imputation we're trying to fit a pattern to missing data.
17 We're trying to say is there other adjacent data that can help
18 me understand what should go in this box.

19 And in panel A, when you have that sort of missing-ness,
20 which is, first of all, there's not as much, it appears to be
21 randomly distributed, we can look at that, we can rely on the
22 adjacent units and we can say OK, it's not only stars that are
23 missing, it's not only red squares that are missing, I can see
24 from the adjacent units that the pattern is square, star,
25 square, star, square, star, on down the road, and I can fill in

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1 those missing units with adjacent information to impute the
2 pattern.

3 I contrast that, panel A, at the top, with panel C, two
4 sections down, in which you, No. 1, have more missing-ness,
5 there are more units that are gone, and it appears to be
6 clustered. It's not exactly in a random fashion. There
7 appears to be some places where there are two or more missing
8 units next to each other. And in panel C, the point is quite
9 simply that you don't have enough information, because it's not
10 missing and random, that you're creating many more difficulties
11 in trying to fill in those patterns. It's not to say that
12 someone cannot come along and put a shape in these patterns.
13 They can, but they could just as reasonably conclude that the
14 pattern in panel C is square, square, square, star, star, star,
15 square, square -- and they would be wrong. That's not the
16 actual pattern. But they would conclude that, and they can put
17 something in the box. And the reason that they have so much
18 difficulty in panel C is that there is more missing information
19 and it is not missing at random; it's clustered and there are
20 other problems.

21 And so this is essentially what we're trying to do with
22 imputation, is we're trying to use adjacent information to fill
23 in the box of a completely missing case that we know nothing
24 about.

25 Q. And let's go back to PDX 30 a moment and talk about how

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1 these concepts of imputation will play out for immigrants and
2 Latino communities in the 2020 census.

3 THE COURT: I think, actually, before we carry on,
4 we'll end with our kindergarten exercise of the shapes and take
5 our break. Just to remind you we're only going to break for
6 half an hour today. It's 1:02. You should be ready to go at
7 1:30 so that we can start promptly thereafter. With that, I
8 will see you in half an hour.

9 Thank you.

10 (Luncheon recess)

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AFTERNOON SESSION

2:00 p.m.

THE COURT: All right.

Mr. Barreto, you are still under oath.

Ms. Fidler, any estimate on how much time you have left?

MS. FIDLER: We are thinking about 45 minutes, your Honor.

THE COURT: About how many?

MS. FIDLER: 45 minutes or a little less. We are going to try to tighten it up.

THE COURT: Go ahead.

BY MS. FIDLER:

Q. Can we please return to PDX 30.

We are looking at how imputation will play out with the immigrant and Latino communities in the 2020 census. You have listed four issues here regarding imputation.

Can you describe those, the issues that you have identified?

A. Yes.

So at the top part of the screen, I had identified some of the general principles or theories that need to be present that allows whole person imputation to work better. And then here on the bottom part, I am summarizing the findings of my analysis in evaluating whether or not those conditions

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1 are present.

2 So the first bullet indicates that the donor group of
3 self-responders is statistically different on multiple
4 demographic characteristics, while the donor group is supposed
5 to be statistically the same so that the information it can
6 provide is similar. In this case, that is not present.

7 The second is specifically the donor group has
8 statistically smaller household sizes. This is a very
9 important component when applied to household estimates, is
10 that the people choosing not to respond to the census have
11 statistically larger household sizes.

12 The third bullet is that the missing group is
13 non-ignorable. Similar to the example I gave of trying to
14 estimate HIV rates in people with HIV not wanting to answer the
15 census, we have similar evidence here that that missingness is
16 not at random and, instead, it is correlated with a key
17 variable of interest.

18 Finally, whether or not the missing group is randomly
19 dispersed across the country or it tends to be geographically
20 clustered. Here, the evidence suggests that it is
21 geographically clustered.

22 Q. Earlier we were anticipating a anticipated decline in
23 self-response rates.

24 What does your analysis tell about the ability of
25 imputation to ameliorate the impacts of the decline in

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1 self-response that you have laid out?

2 A. The imputation will certainly write some number in the box
3 for the households that have not responded at all. They will
4 come up with an estimate.

5 My analysis indicates that, on whole, that this will
6 exacerbate the net differential undercount for Latino and
7 immigrant communities, in that the imputation estimates will
8 be less accurate and they will be too small in Latino and
9 immigrant communities.

10 So while they will come up with a number, it will
11 continue to underestimates the true count.

12 Q. Lets take a look at table one from your initial report,
13 Plaintiffs' Exhibit 287.

14 What is this table analyzing?

15 A. This is a table from the first report of September 7 in
16 which a section that we had on imputation in the initial
17 report. I'm looking specifically at whether or not these
18 assumptions are present or if they have been violated.

19 The important question is whether or not the non-responding
20 units are statistically similar or statistically different than
21 the non-responding units. This is something that would be very
22 difficult for the census to analyze because they have no
23 information about the non-responding units. They just know it
24 is missing and it is blank.

25 In my survey, I have people who answered all of my

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1 questions, and then they told us whether or not they would be
2 responding units or non-responding units. I have the luxury of
3 being able to sort of look behind the curtain and say, what do
4 the non-responding units actually look like. We have
5 summarized that here in table one, the differences between the
6 two.

7 Q. Can you elaborate?

8 Can you explain the differences that you have seen as
9 a result of the data?

10 A. Yes.

11 So each of the rows here is a different demographic
12 characteristic in the survey.

13 First we have one for the responders, the people who
14 say yes at question one and yes at question two, that they are
15 going to fill out the survey, and this is just their averages.
16 Then we have the same information for nonresponders.

17 And the important column then is the third column,
18 which is the difference in mean. That is saying how similar or
19 different are responders and nonresponders.

20 Then finally, we have the p-value, which is the degree
21 of statistical significance, which all of these indicate they
22 are statistically significant at the 90 percent certainty level
23 or higher.

24 Let me just give one example. If you look at row one, just
25 to start with, the responding units are much more likely to be

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1 English-speaking households than the non-responding units; 93
2 percent versus 85 percent. That difference of eight points is
3 statistically significant at the 99.9 percent level.

4 So what we have found is that for multiple different
5 demographic indicators, responding units are not statistically
6 the same as non-responding units. They are, in fact,
7 statistically different on many important metrics. We think
8 that this will create considerable problems for imputation.

9 Q. Can you tell if the missing data is non-ignorable?

10 A. In this case, we note that the missing data does appear to
11 be correlated with key variables of interest, variables that
12 could be creating problems for imputation theory. That
13 includes things like being foreign-born, being Spanish
14 speakers, and then, most notably, household size.

15 So the very types of information that we want to impute may
16 actually be correlated with the decision to not respond, which
17 would indicate that the missingness is not ignorable.

18 Q. What are the implications of these differences between the
19 responding and non-responding households for the efficacy of
20 imputation?

21 A. What this suggests, first at the theoretical level, is that
22 some of the preconditions for whole person imputation to be
23 more successful are missing. They have been violated. We
24 would like to have our missing units, in a perfect world,
25 completely missing at random, so that we can't distinguish them

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1 from the responding units. Therefore, when we draw the
2 imputations from the adjacent units, we know there is not big
3 differences between the two.

4 Unfortunately, in this case, that is not present.
5 There are statistically significant differences across a
6 variety of demographic characteristics, including household
7 size between the two.

8 Q. Can you impute using household size from other units?

9 A. Well, the census is going to attempt to imputes household
10 size from adjacent units. The difficulty is that you are
11 making an assumption that the people who filled out the survey
12 are basically similar to the people who did not fill out the
13 survey.

14 If you want your imputation to be accurate, that is the
15 assumption you're making. This evidence suggests that on
16 household size in particular, they will be making an error.

17 Q. We would like to move table one into evidence as
18 Plaintiffs' Exhibit 680.

19 THE COURT: 680 this is?

20 MS. FIDLER: Yes.

21 THE COURT: Any objection?

22 MS. BAILEY: No, your Honor.

23 THE COURT: Admitted.

24 (Plaintiffs' Exhibit 680 received in evidence)

25 BY MS. FIDLER:

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1 Q. You've listed these effects on a national level.

2 Do you expect them to be dispersed geographically
3 equally?

4 A. No.

5 I believe that we will see these effects in different
6 communities at unequal rates.

7 Q. Lets pull up figure two of your report from page 24.

8 What is this map?

9 A. This is a zip code map of where the non-respondents are,
10 the people who change from Q1 to Q2. And what it indicates is
11 that there appears to be strong geographic clustering, that
12 rather than dispersed across the entire map, they tend to be
13 concentrated in zip codes that have high Latino and immigrant
14 populations.

15 Q. What is this map based on, what data is it based on?

16 A. The underlying data of my survey, the 6,309 respondents.

17 Q. What are the implications of the data on this map?

18 A. Once again, in order for imputation to be most effective,
19 you don't want a clustering of your missing units, meaning you
20 hope that maybe just one unit happens to be missing out of a
21 neighborhood tract of 100 houses, and you have 99 other
22 adjacent units that you hope to be able to draw from.

23 But if there are patterns whereby multiple houses are
24 missing in a similar neighborhood, it creates difficulty for
25 two reasons. One, you're using the same donors in the same

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1 neighborhood to impute to the same cases. So whatever errors
2 you're making are getting duplicated.

3 The second is just that there are fewer donors. If there
4 is more missing cases clustered around each other, you have
5 fewer donors to draw on.

6 MS. FIDLER: Your Honor, we move figure two into
7 evidence as Plaintiffs' Exhibit 681.

8 THE COURT: Any objection?

9 MS. BAILEY: No, your Honor.

10 THE COURT: Can I ask a question, that maybe I'm
11 missing something, but just so I understand this.

12 I don't know precisely what the sort of donor base, if
13 you will, is for the imputation process that the Census Bureau
14 engages in, but I presume that they are not -- if there is
15 missing data with respect to, say, a household in New York
16 City, that they are not going to impute that data from, you
17 know, respondents in, say, Montana or something.

18 I assume, in that regard, it is based on, you know,
19 certain cuts with respect to geography and other dimensions.
20 Does that not mitigate some of the concerns that you have
21 described, for example, with respect to there being statistical
22 differences on multiple demographic characteristics?

23 That is certainly true if you look at it at a national
24 level. If you cut the data and then you're looking at only,
25 you know, the particular community in which the household is

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1 that you're trying to impute, doesn't it then reduce the
2 statistical differences?

3 THE WITNESS: Well, they do, I believe, we'll talk
4 about their specific process, but they do use a process that
5 they describe as nearest neighbor approach, and so they are
6 drawing on roughly 20 nearby similar households in your
7 neighborhood to impute a missing unit.

8 Those should be similar on a number of different
9 characteristics, given neighborhood clustering in general.
10 What the data in our survey suggests, and I'll discuss a bit
11 more detail, is that even after controlling for those other
12 similarities, the decision to not respond is negatively
13 correlated with house size.

14 So even once you have similar units, when you go into
15 a neighborhood and it is similar race, similar income, similar
16 immigrant status, etc., the households that are choosing to not
17 respond in my survey still on average have larger household
18 sizes. So they'll be using that information, I believe, in
19 attempting to get an apples to apples comparison, but still
20 will be missing a number of people.

21 THE COURT: Thank you.

22 MS. FIDLER: Your Honor, just to clarify, is figure
23 two admitted?

24 THE COURT: Yes, as 681.

25 MS. FIDLER: Thank you.

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1 (Plaintiffs' Exhibit 681received in evidence)

2 BY MS. FIDLER:

3 Q. Please call plaintiffs' Exhibit 389.

4 What is this document?

5 A. This is a research study that was published in a
6 statistical journal by Edward Kissam, where he was looking at
7 many of the issues related to nonresponse followup, undercount,
8 and imputation in Latino immigrant communities.

9 Q. Is this research you would typically rely on?

10 A. Yes.

11 If you were evaluating survey methodology in
12 particular, census methodology, this is an example of an
13 article you would rely on.

14 Q. Did you consider this article in form willing your opinion
15 in this case?

16 A. Yes, I did.

17 Q. What points in the article did you consider?

18 A. Primarily that this was essentially an updated or new study
19 that followed in the similar trends of the de la Puente studies
20 that we had mentioned before.

21 This is now a 2017 published study, and specifically
22 it evaluated the efficacy of self-response, NRFU, and
23 imputation in Latino and immigrant communities.

24 So it was important to me to have a newer study to assess
25 the extent to which potential problems continued to exist.

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1 Q. Can we have a call-out from page 13.

2 Could you read this call-out, Dr. Barreto, and let us know
3 how it influenced your opinion?

4 A. Yes.

5 I believe this was in a section that Mr. Kissam was
6 speaking to issues relating to imputation specifically in
7 Latino immigrant communities.

8 He states that in cases where a low visibility "back house"
9 is correctly imputed as being occupied, bout household
10 information is missing, household size and characteristics are
11 likely to be imputed based on the nearest housing unit which
12 was enumerated, often the main house. When this happens, the
13 demographic and socioeconomic characteristics of the nearest
14 enumerated household, typically, an older, settled, more
15 financially secure immigrant household, will be attributed to
16 the actual occupants of the "back house," typically a younger,
17 more recently arrived couple with children, a single mother
18 with children, or teenage migrant newcomers, usually young men.

19 Q. How did Kissam's findings influence your opinion?

20 A. Well, this specifically, I think, speaks to the point that
21 I was attempting to explain to the judge, which was that even
22 when you use similar housing units, nearest housing units to
23 impute, Mr. Kissam's research found evidence in Mexican
24 immigrant communities that both the household size and the
25 characteristics were likely to be imputed incorrectly and

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1 incorrect assumptions are being assigned.

2 Q. Did your original report quantify the number of households
3 that fall out as a result of imputation?

4 A. Yes.

5 Q. Did you update your analysis at a later point?

6 A. Yes, I did.

7 Q. Did you use Census Bureau research in performing that
8 quantification?

9 A. Yes.

10 Q. Lets pull up PX 478.

11 What is this document?

12 A. This is a document that I believe was produced by the
13 government during the deposition or discovery process that
14 describes the 2010 imputation formula and how they expect to
15 use imputation in 2020.

16 Q. How does the Census Bureau do imputation as described in
17 the J12 memo?

18 A. Well, in this memo, they describe, first, sort of the
19 history of different types of imputation that the census has
20 used, and then they explain that they are going to be using a
21 process that is called nearest neighbors.

22 The first thing that they do is settle on similar
23 housing types. They want to make sure that the structure is
24 similar so that if they were attempting to impute a missing
25 apartment unit, they would try to also use other multi-unit

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1 structure to impute. If they were trying to impute a missing
2 4,000 square foot suburban house, they would get similar types
3 of houses.

4 Then they talk about how they want to make sure that they
5 have similar characteristics and proximate, geographically
6 proximate, and they attempt to look for 20 units. When they
7 get 20 of these so-called nearest neighbors, they then create a
8 distribution of the household sizes from there, and then they
9 assign a household size to the missing unit.

10 Q. Could you yourself have used the same exact methodology as
11 set forth in J12?

12 A. I could not have because, as I said, I did not implement
13 the census, I did not attempt to mimic the census.

14 This J12 memo describes someone with all of the data in the
15 entire country, the 125 million households. To do this
16 approach, you need to have the full enumeration. And you get
17 the 20 nearest neighbors.

18 What I did was read their memo, looked at the theory
19 they were trying to put together of comparing apples to apples
20 in similar units, and then I attempted to approximate that
21 about my dataset.

22 Q. How did you account for geography?

23 A. Well, we do have geographic variables in our dataset that
24 include what the state and county and other things of
25 residents, but we also have other geographic indicators that

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1 the census would use to try to create these so-called
2 neighbors. Those are things like population density, the
3 percent of people in the tract who are renters, the degree of
4 urbanicity, which is a census-defined concept of how rural or
5 urban a place might be. So I was still able to account for
6 some geographic factors in my model.

7 Q. I would like to call out Plaintiffs' Exhibit 657, page
8 four.

9 What is this document, Dr. Barreto?

10 A. This page four is a table that I created to estimate the
11 net undercount after imputation in 2020 and it contains three
12 sections. The top section is the actual table of data results.
13 In the middle, I have explanations of what each of those
14 individual columns stands for to aid in the interpretation.
15 And at the bottom, I have copied and pasted the code or the
16 script that I used in generating my imputation model.

17 MS. FIDLER: Your Honor, we offer Plaintiffs' Exhibit
18 657 into evidence.

19 THE COURT: Any objection?

20 MS. BAILEY: No objection.

21 THE COURT: Admitted.

22 (Plaintiffs' Exhibit 657 received in evidence)

23 BY MS. FIDLER:

24 Q. Please describe the factors that went into your model and
25 where I would find them.

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Barreto - Direct

1 A. Well, here at the poll, I have where it says imputation
2 model, the bottom third of this screen, I have listed the
3 factors that went into the model. And as I described, what I
4 attempted to do was to account for many of the same factors
5 that the census will be accounting for so that I can
6 approximate the same approach.

7 The key is that we are trying to compare apples to apples,
8 so that we are doing exactly what your Honor just asked about,
9 was making sure that we are giving similar donors to the
10 missing units. So this regression model here is doing that.
11 It is controlling for or neutralizing the effects of these
12 other neighborhood characteristics, household characteristics,
13 so that we can hold those constant across the model.

14 Q. Why did you choose these factors in particular?

15 A. Well, these are the factors that account for both
16 geographic variables, as we just discussed, but also factors
17 that are correlated with neighborhood characteristics.

18 So by controlling for the percent renter, by
19 controlling for the average income of the respondent, their
20 race, these are things that are often correlated at the census
21 tract level.

22 Q. How does it work in terms of how did you run your model?

23 So you came up with the factors, then what did you do?

24 A. So the first line there is just a simple regression where
25 we are trying to redirect household size. That is what this

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Barreto - Direct

1 model is attempting to redirect is what is the size of your
2 household. That was question four on the survey. You can see
3 that right there listed at question four. The first three
4 legs, reg is an abbreviation in the program for regression.

5 Importantly, in this first line of code, it says at the
6 very end of the line that I am only running this regression on
7 responding units. If Q1 equals one, Q1 equals one. People who
8 the census is ultimately going have to data on, responders. I
9 am using this model of responders, what does data on responders
10 tell me. Then I attempt to predict your household size. That
11 is the second line of code there, where it says predict nat_ll,
12 which is just an abbreviation for national household. So then
13 I predict, based on this model, this donor information of
14 responders.

15 Then the nice thing about our survey is that we asked
16 people their household size, and we have that for everyone, the
17 responders, and we have it for the nonresponders. So rather
18 than just predict or impute someone's household size, I have
19 the ability to check that against their actual stated household
20 size in my survey. I can see if it is too high, too low, or
21 exactly right.

22 So the next few lines of code go through how I created that
23 difference, and then how I tested whether or not there was a
24 difference, and if that difference was statistically
25 significant.

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Barreto - Direct

1 The second to last line there of code, I ran a new
2 regression on the difference, but I only analyzed the people
3 who were nonresponders here at the end. So I'm taking data
4 from responders, I am creating a model trying to understand
5 what is the average household size of responders, and then I
6 predict it to nonresponders. And then I look up nonresponders
7 in the dataset and say, we predicted three. You actually have
8 four. You get a negative one, and so on.

9 That is what that last line -- second to last line of
10 code does, and that is what gives us the estimate of whether or
11 not the imputation will be correct, too high or too low.

12 Q. Please go to Plaintiffs' Exhibit 661.

13 What is this?

14 A. This is a sample screenshot of my actual dataset. These
15 are all actual rows in the dataset. These are all real
16 respondents in my dataset who I had to do an imputation for.

17 Q. Can you please walk us through how the imputation model
18 worked when applied to your data?

19 A. Yes, yes.

20 As a starting point, it says at the top that all of
21 these respondents here, just for purposing of illustration, are
22 Latinos who were non-responding units. Then I had to impute
23 their household size.

24 So this is, again, just a snapshot of the data, and you can
25 see there is a zip code. You can see there is question one.

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Barreto - Direct

1 They all said yes. There is question two. They all no longer
2 said yes. They either said no or refused. There is the
3 question about trust. There is the question about household
4 size, age, and so on, some other information about them.

5 The important column here is that imputed column, which is
6 the third to the right. That is the model's guess of what your
7 household size is based on these other characteristics, your
8 nearest neighbors, so to speak, and I tried to approximate.
9 The nice thing is, though, as I said about the survey, I know
10 your actual household size because you told me that.

11 So this is a very common technique in imputation
12 practice in survey research is that in order to make the
13 imputation accurate, we will often impute, compare it to the
14 actual answer, and then you can adjust your models to get your
15 imputation more accurate. But you need to know the actual
16 answer. Otherwise, you come up with an imputation, and you
17 don't know what to compare it to. You don't know if you're
18 high or low.

19 So the final column there is called the difference. That
20 difference column is the column that ultimately I make my
21 estimates out of. That difference column takes for every
22 single respondent what I predicted, what I imputed their
23 household size would be, then what they actually told me their
24 household size was, and how far off I was.

25 Anything with a positive value indicates that we were too

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Barreto - Direct

1 low. Anything with a negative value indicates that we were too
2 high. So there you can see, just for example, if you look at
3 the top two rows, the very first respondent in this dataset,
4 based on their nearest neighbor characteristics, we would have
5 imputed them a household size of 3.78. In the survey, they
6 told us that three people live in their house. So we
7 overcounted that particular household by .78.

8 The second row in the data, you can see we imputed their
9 estimate to be 2.39. In reality, they had six people who lived
10 in their household. So we missed 3.61. We undercounted them
11 by 3.61.

12 So every single respondent in the dataset gets a different
13 imputation value, just like what the census will do. They will
14 impute a different household size for all of their
15 non-responding units. This difference column over here at the
16 end allows me to come up with an estimate on average how good
17 was the imputation.

18 Q. What is the primary difference between your data and the
19 Census Bureau's data for imputation?

20 A. Yes.

21 Well, my data is a survey of 6,300 respondents
22 nationwide. The census will have the enumeration that they
23 complete, which will be close to, at that point, after using
24 proxy and other means, administrative records, the full
25 population count. So they will have over 120 million records.

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Barreto - Direct

1 So they will go in and attempt to use those nearest neighbors
2 to impute and guess how many people live in the missing unit.

3 But both models are using a similar approach in that
4 we are attempting to control for and hold constant these other
5 neighborhood characteristics, so that we are comparing apples
6 to apples to see that, once you control for those, is there any
7 remainder term, is there any error rate that is left over.

8 MS. FIDLER: At this time, we move plaintiffs' Exhibit
9 661 into evidence.

10 THE COURT: Any objection?

11 MS. BAILEY: No, your Honor.

12 THE COURT: Admitted.

13 Just to clarify, 657 is listed on the exhibit list as
14 the supplemental report. Is it just the report?

15 MS. FIDLER: I'm sorry. We're just proposing to move
16 in the table.

17 THE COURT: All right.

18 MS. FIDLER: Not the report.

19 THE COURT: Should we give that a different number?

20 MS. FIDLER: We should.

21 THE COURT: 682?

22 MS. FIDLER: Yes. Yes, your Honor. Thank you.

23 THE COURT: Going back to what had been admitted as
24 657, it is actually admitted as 682, and is limited to the
25 table.

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Barreto - Direct

1 (Plaintiffs' Exhibit 682 received in evidence)

2 BY MS. FIDLER:

3 Q. All right. Lets return to the first table of Plaintiffs'
4 Exhibit 657, going back to that table, which is now plaintiffs'
5 Exhibit 682.

6 Can you please walk us through the results of this
7 analysis? Lets start from left to right again.

8 A. Sure.

9 So this table is a table that is similar to many of the
10 other tables that I have produced and discussed earlier, in
11 which I have results for the national population, and then
12 results for different racial and ethnic groups in the United
13 States.

14 Column B is a reproduction of a similar column in my first
15 report, which was just household size. How many total
16 households are there nationally, as well as by racial and
17 ethnic group. That data comes from the 2016 CPS.

18 Problem C is also a column that I had in my initial report,
19 and this is the expected number of households that will be
20 impacted given what their nonresponse rate is, their dropoff
21 rate. How many households do we expect will be put into the
22 need for imputation potentially.

23 Then column D, E, and F are where I put in my imputation
24 results, so to speak. Column D in particular is the estimate
25 of how many people will be missed in each household on average.

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Barreto - Direct

1 When you take that data we were just looking at and you compare
2 the correct actual household number to the predicted or imputed
3 household number, that is the error rate that you'll see, and
4 so that number is the number that we're really interested in
5 knowing what impact the predicted error rate on the overall
6 undercount.

7 Q. Then continuing to the next set of the predicted net
8 undercount, can you explain how you derived that?

9 A. Yes.

10 Given the estimate rate and similar to other tables, I have
11 a lower bound and an upper bound of that based on the
12 regression that we ran. I am multiplying that by the number of
13 households that will potentially need imputation due to the
14 citizenship question.

15 So that estimate in column G of 2.8 million, that is the
16 result of multiplying 8.9 million in column C by .3179 in
17 column D. So those two things together, when multiplied
18 together, lead us to 2.8 million households. If, on average,
19 nationally the imputation is off by .3179, meaning almost one
20 third of a person, and you are off on average across all of
21 these households, you will end up with a net undercount of
22 2.8 million people.

23 and Then H and I just, again, provide the lower and
24 upper bound of that estimate, using the lower bound estimate in
25 E and F. So those are where we are deriving the rates in D, E,

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Barreto - Direct

1 and F, and then the predicted total net undercount is in G, H,
2 and I.

3 Q. What is column J?

4 A. J is the overall U.S. population using the 2016 ACS
5 numbers, and so I am holding that constant. The column B is
6 the number of households in 2016. Column J is the number of
7 persons in 2016. I can use that to come up with a rate, an
8 undercount/overcount rate. That is what I report at the very
9 end of this table. That is those 2.8 million people who will
10 be undercounted will represent 0.88 percent of the overall
11 U.S. population in 2016.

12 Q. So you've walked us through the national results.

13 How does the net undercount after imputation affect the
14 Latino population?

15 A. Well, the second row there, we see the Latino population.
16 The first thing to note is that the estimate in column D is
17 over twice as large, .7569. What that suggests is that in
18 Latino households, the imputation misses approximately three
19 quarters of a person per household on average.

20 That is the result of aggravating and averaging up
21 everything that was in that last column. So some had too many
22 people by half of a person, other households had too few people
23 by two or three people. When we average those all together,
24 Latino households will have an estimated three quarters of a
25 person missing from the imputation model.

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Barreto - Direct

1 And as I said at the outset, if you just look at column B,
2 and I referenced this on a previous table, Latino households
3 are approximately 13 percent of all national households. But
4 when you look at the impact of the net undercount, because the
5 nonresponse rate is going to be higher, more households are
6 going to be put into NRFU, more households are going to be put
7 into imputation, more Latino households are going to have to
8 get imputed. There is no question of that.

9 Now, the estimate is telling us that when we impute them,
10 we are going to miss three quarters of a person, because they
11 have larger household size, and the characteristics of the
12 households which are deciding not to answer have more people.

13 What that means is that it takes us to column G, which is
14 simply multiplying that .7569 number by 2.35 million, which is
15 in column C. That's the number of households that we estimate
16 will need to be imputed. You result in 1.78 million net
17 undercount of Latinos in column G.

18 The reason that that is so significant is that using the
19 exact same model, the national net undercount is expected to be
20 2.8 million, 1.78 million of which will be Latino. That is 65
21 percent of the people missed will be in Latino households.

22 So while they only represented 13 percent of all
23 households, and every step along the way they are over
24 represented in being undercounted, the final estimates suggests
25 that they'll be 65 percent of all of the undercount.

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Barreto - Direct

1 Q. What percentage of the Latino population would that
2 represent?

3 A. Well, if we look at column K, they are over at the right,
4 that would be 3 percent, 3.09 percent of the Latino population
5 would not be counted. And I've created a simple metric there
6 at the bottom that just takes the Latino undercount rate as a
7 ratio of the national undercount rate, and that is that line at
8 the bottom in bold which suggests using the estimate, Latinos
9 would be three and a half times or 350 percent worse in being
10 undercounted than the national average.

11 For all of my estimates here, I provide the lower and
12 upper bound of the estimate.

13 Q. So you're saying that it could be as low as 1.89 percent,
14 but it could also be as high as 4.3 percent?

15 A. Yes, that is correct.

16 That is what the lower and the upper bound over there
17 indicate, that if we take the lower bound of the estimate,
18 approximately 1.89 percent of Latinos will be undercounted. If
19 it is on the upper end of the distribution, it will be 4.3.

20 In either of those scenarios, not only are there more
21 raw Latinos getting undercounted, but the ratio to the national
22 undercount rate is substantially worse for Latinos.

23 Q. Is this estimate reflective of the effects of NRFU?

24 A. Yes.

25 Q. How so?

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Barreto - Direct

1 A. We are taking into account throughout the process the
2 number of people who will be predicting contacted, and as I
3 indicated, while there will be some success in predicting
4 contact, there will be additional people who move away from
5 contact the longer the process goes on. So this takes that
6 into account, as we have replicated this table not just for the
7 Q1 to Q2 rate, but also for my second rate that I've been
8 speaking about, the Q1 to Q8 rate.

9 Q. Lets pull that up. It is the next page of Plaintiffs'
10 Exhibit 657.

11 Can you just explain the difference between these two
12 tables?

13 A. Yes.

14 So just to be consistent with all of the other work that I
15 produced, I replicated the rates using what I presented just
16 now, which was the change in nonresponders from Q1 to Q2.
17 Here, using the change in nonresponders from Q1 to Q8. So all
18 of those numbers are updated to reflect the Q8 dropoff rate.
19 And here, what we find is a very similar story, in that the
20 Latino population in particular will have a disproportionate
21 impact in the none -- in the undercount, in the net undercount,
22 and be substantially higher than any other group in terms of
23 their relative undercount rate.

24 MS. FIDLER: Your Honor, we offer this table into
25 evidence as Plaintiffs' exhibit, I believe, 683.

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Barreto - Direct

1 THE COURT: Any objection?

2 MS. BAILEY: No, your Honor.

3 THE COURT: Admitted.

4 (Plaintiffs' Exhibit 683 received in evidence)

5 MS. FIDLER: Thank you.

6 BY MS. FIDLER:

7 Q. Why do you conclude that imputation will not ameliorate the
8 decline in self-response attributable to the citizenship
9 question in particular?

10 A. What we found when we analyzed this imputation model was
11 that the decision to not respond appears to be correlated with
12 household size, that is, people who are the most anxious and
13 nervous and not willing to respond have larger household sizes
14 that cannot be accounted for by other demographic differences.
15 This is consistent with the literature that suggested that
16 people would be more fearful if they had other relatives who
17 were noncitizens and others living in the house.

18 So when the imputation model is applied at the very end of
19 the process, there will be more Latino and immigrant households
20 in need of imputation, first of all, because of the lower
21 self-response and because of the lesser success of NRFU. So
22 when we get to the imputation component, this model suggests
23 that there will be a larger miss, disproportionately larger
24 miss of Latino household sizes leading to a net undercount.

25 Q. What is an overcount?

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Barreto - Direct

1 A. An overcount is an instance in which either the imputation
2 model, or other means of picking up respondents in the census,
3 either double counts or incorrectly assigned too many people to
4 a household.

5 Q. Do you believe in overcount will offset the differential
6 net undercount in 2020?

7 A. An overcount will definitely not offset the net
8 differential undercount because an overcount is most likely in
9 white and more stable and residentially stable communities.

10 So to the extent that there is any overcount in 2020, that
11 will be an incorrectly assigning extra population, not in the
12 Latino and immigrant community. So while the Latino and
13 immigrant communities continues to be undercounted, any net
14 overcount would not offset the net differential. Even if it
15 did add some extra erroneous people to the tally, that would
16 actually serve to exacerbate the difference because those
17 people would not be added in the Latino and immigrant
18 community.

19 Q. What is the size of the differential undercount that you
20 anticipate flowing from the citizenship question?

21 A. Well, I would say it is between the range of about
22 1.5 million and 1.8 million, according to these charts in the
23 Latino and immigrant community. The number of people who will
24 be net undercounted, that is taking into account the possible
25 overcounts and undercounts combined based on this table.

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Barreto - Direct

1 Q. Dr. Barreto, in your opinion, have you offered the court
2 statistical and quantitative evidence of this anticipated net
3 differential undercount?

4 A. Yes.

5 Q. Can you elaborate briefly?

6 A. Well, this data here comes from my underlying survey in
7 which we already started out providing quantitative evidence of
8 a dropoff in self-response and a dropoff in NRFU, and we
9 already pointed to differential house sizes of responding and
10 non-responding units.

11 What this table shows is that using that same underlying
12 data, when we fit an imputation model to the data that we try
13 to predict the household size, we will continue to
14 underestimate the household size of Latino non-responding
15 households significantly between half and three quarters of a
16 person, depending on which model is applied.

17 Q. Dr. Barreto, is it your opinion that your survey is the
18 best way to know how a citizenship question would impact the
19 2020 census?

20 A. I wouldn't say it is the best way. It is definitely a good
21 way. There is other ways we could envision this.

22 Q. What would be a different or even better method of testing
23 this question?

24 A. As I said at the very beginning, when you asked me, I
25 consider my study to be an evaluation of how the public will

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Barreto - Direct

1 respond to changes in administrative form.

2 But if you really wanted to test how this would work in the
3 real world, you could certainly have run a pilot study or other
4 testing of the exact instrument in the exact context.

5 Q. Is that something the Census Bureau normally does when they
6 add a question to the census?

7 A. Yes.

8 This is something, as we heard testimony this morning,
9 that there is an extensive process that outlines testing for
10 new questions by the Census Bureau.

11 Q. Did they do that here?

12 A. They did not.

13 Q. Have you heard or read anything from the Census Bureau to
14 explain or seeks to justify why they have not sought to test
15 the question in these circumstances?

16 A. Yes.

17 Q. What is that?

18 A. I recall reading in Dr. Abowd's declaration, disclosure,
19 that in his opinion or in the opinion of the Census Bureau, as
20 he was summarizing, they felt that the question had been
21 tested, and they further felt that they could get an exemption
22 from a full test because this sort of process had been done
23 before in previous census efforts.

24 Q. Did you reach any conclusions about the validity of that
25 position?

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Barreto - Direct

1 A. Yes.

2 Q. What are they?

3 A. Well, with respect to the first point, that the question
4 had been adequately tested, Dr. Abowd refers to the 2006
5 inclusion of the citizenship question for the first time on the
6 ACS and says that that is an example of a question being tested
7 that can therefore be applied to the decennial census.

8 In my opinion, that is an inappropriate test for two main
9 reasons. The first is that the context is completely
10 different. The macro environment that we spent so much time
11 talking about earlier, what was happening in 2006 is nowhere
12 consistent with the macro environment that we face today.
13 Indeed, many census field workers themselves reported this to
14 the Census Bureau when they were out in the field. So we can't
15 assume that if a question worked or didn't work in 2006,
16 related to citizenship, it would work today.

17 Secondly, it is not clear to me at all that the
18 question was adequately performing, as the Census Bureau
19 indicates. In my review of the Brown, et al. report, as well
20 as my review of new ACS response rates from 2017 that were
21 provided to me, I concluded that the ACS citizenship question
22 was not adequately performing. The Brown report indicates that
23 as many as 30 percent of respondents may be giving inaccurate
24 or false information about their citizenship status and that
25 this is a known issue.

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Barreto - Direct

1 And further, the 2017 response rate table that the
2 census produced indicates that in 2017, there was a drop in
3 response to the citizenship question, and that this was
4 disproportionately found in the Hispanic community. So both of
5 those items would suggest that it was not adequately tested and
6 that the data was not currently adequately performing.

7 Q. You mentioned discussion of historic examples.

8 Are there examples of putting a question on the
9 decennial without pretesting that would justify adding the
10 citizenship question without such testing?

11 A. Yes.

12 There is one additional point that Dr. Abowd makes in
13 his disclosure, and that is that the census has done this
14 before, and he cites as an example, the extension or
15 application of the Hispanic ethnicity question in 1970 to the
16 decennial census, which had previously been used on the CPS
17 household survey.

18 Q. Is the Hispanic ethnicity comparable to the citizenship
19 question?

20 A. No, not at all. It is not a sensitive question, it is just
21 a clarification of race and ethnicity. It is not the same type
22 of question at all.

23 Q. Is the experience with the Hispanic ethnicity question one
24 of success?

25 A. No.

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Barreto - Direct

1 To the contrary, the reactions to this by social
2 scientists, as well as by census demographers and researchers,
3 was that this was a poor application. In fact, the census
4 commissioned and printed a followup study digging in and trying
5 to understand what had happened, and the conclusion was that
6 the count was incorrect, that many people misunderstood the
7 question, and that they had to do considerable adjustments
8 after the fact for many years to try to accurately understand
9 how many Hispanics were in the country in 1970.

10 People did not understand what the question meant. In one
11 example, the census indicates that many non-Hispanics who lived
12 in the Midwest checked the box that they were Central Americans
13 because they lived in the central part of America, and that the
14 same thing happened with many folks who lived in the south, and
15 they considered themselves South Americans. And that many
16 Cubans did not identify as Hispanic and did not check the
17 Hispanic ethnicity box, even though the census had hoped that
18 they would.

19 So those are the exact sorts of things that they could have
20 figured out if they had properly tested that before applying it
21 to the 1970 census. So citing that as an example is actually
22 an example of a question that did not work well.

23 Q. Dr. Barreto, does the absence of pretesting by the Census
24 Bureau affect the confidence of your conclusion that the
25 citizenship question will result in a net differential

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Barreto - Direct

1 undercount?

2 A. No, that does not affect the confidence in my results. It
3 would have been something that would have been nice to test it,
4 but I still have data that I draw on, most notably in my
5 survey.

6 Q. Why not? Why doesn't it?

7 A. Well, because I was still able to conduct an evaluation. I
8 was able to field the survey and evaluate how this might work.
9 I was able to review the extensive literature, and in the other
10 census reports, and come to a conclusion that this would lead
11 to a net differential undercount.

12 MS. FIDLER: Thank you, Dr. Barreto. I pass the
13 witness.

14 THE COURT: Cross-examination.

15 Ms. Bailey, any estimate of the length of your cross?

16 I recognize there is some imprecision here.

17 MS. BAILEY: I would say more than half an hour.

18 THE COURT: But sounds like we will be able to get
19 done with Dr. Barreto today?

20 MS. BAILEY: I think it will be tight.

21 THE COURT: All right. Lets try our best not to go
22 too quickly for the sake of the court reporter.

23 Go ahead.

24 MS. BAILEY: Thank you, your Honor.

25 CROSS-EXAMINATION

IB9sNYS5

Barreto - Cross

1 BY MS. BAILEY:

2 Q. Good afternoon, Dr. Barreto.

3 A. Good afternoon.

4 Q. You testified about the importance of surveys being direct,
5 objective, and neutral, right?

6 A. I don't know if that was today or in the deposition, but I
7 recall speaking with you about that.

8 Q. And you testified that questions are designed not to lead
9 respondents to give one particular answer over another?

10 A. Yes.

11 Q. And you testified at your deposition that you conducted
12 some pretesting to test the form of the questions used in your
13 survey, right?

14 A. Yes.

15 Q. You specifically fielded a pilot test of the survey to test
16 the efficacy of the question, correct?

17 A. Yes.

18 Q. You didn't submit your survey for formal peer review before
19 it was implemented, right?

20 A. Not this survey. That peer review process I was speaking
21 to was related to academic publications.

22 Q. Right.

23 Just so the answer is, you didn't submit this survey
24 for formal peer review before it was implemented, correct?

25 A. Not academic peer review, no.

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Barreto - Cross

1 Q. You testified that, I believe, 6,309 people completed the
2 survey out of more than 20,000 that were called, correct?

3 A. Yes.

4 Q. That corresponds to a 28 percent response rate, correct?

5 A. I think that is the rate. I do have the specific number
6 reported in the first report. 28 sounds right.

7 Q. 28.1, I believe.

8 That is substantially lower than the response rate
9 that the Census Bureau obtains on its own surveys, correct?

10 A. Yes.

11 This is a completely different type of study, so we
12 would never compare them. But yes, the number is lower.

13 Q. Thank you.

14 Lets take a look at the first two questions on your survey
15 which you used to estimate nonresponse or dropoff rate from the
16 inclusion of a citizenship question.

17 This is questions one and two.

18 A. OK.

19 Q. Question one tells respondents that the census is an
20 official population count that is conducted every ten years by
21 the federal government, requiring all households to provide
22 certain information of the Census Bureau, which is required to
23 keep the information confidential, correct?

24 A. Yeah, more or less.

25 Q. Respondents in your survey were then asked whether they

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Barreto - Cross

1 planned to participate and submit their information, right?

2 A. Yes.

3 Q. Question two then states that in 2020, the federal
4 government is adding a new question to require you to list
5 whether you and every person in your household is a U.S.
6 citizen, correct?

7 A. Yes.

8 Q. And then asks, with the addition of a citizenship question,
9 will you participate and submit your information, correct?

10 A. Yes.

11 Q. So that means that all respondents in your survey were
12 first asked whether they would participate in a census without
13 a citizenship question before they were asked whether they
14 would participate in a census with the citizenship question,
15 correct?

16 A. Yes, that is correct.

17 Q. So, in other words, no respondents were asked whether they
18 would answer a census with a citizenship question without
19 having just been asked about a census that did not include that
20 question, correct?

21 A. That is exactly correct.

22 Q. Do you recall, during your deposition, I asked whether it
23 was possible that respondents would answer question two
24 differently without the obvious juxtaposition of a census both
25 with and without the question, and you replied that you didn't

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1 have the data to answer that because the instrument was not
2 designed to capture it?

3 THE COURT: Sustained.

4 You don't have to answer the question.

5 Q. Isn't it true that if an individual responded I don't know
6 to question two, meaning they were not sure whether they would
7 answer a census with a citizenship question, you included that
8 in your calculation of nonresponse, didn't you?

9 A. Well, the option was not I don't know. All respondents
10 were given the options of yes, I will participate, or no, I
11 will not participate. And as I had explained before, the third
12 option there was not available to respondents, meaning it had
13 to be volunteered.

14 So if after the interviewer attempted to get an answer
15 from the respondents, some respondents indicated that they did
16 not want to provide their answer, then they were coded as 99
17 for refuse to answering the question.

18 Q. Lets take a look at your deposition transcript, page 176 at
19 page 13 through 19.

20 Sir, I believe there you were asked if an individual said
21 yes to question one and then I don't know to question two, then
22 they would be calculated as breakoff or nonresponse, is that
23 correct?

24 A. I was just clarifying that the words "I don't know" are not
25 in the survey. I'm not disagreeing that they are not

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1 classified as a breakoff or a nonresponse.

2 Q. Thank you.

3 My question was simply, if a person --

4 MS. FIDLER: Objection, your Honor. Let the
5 witness --

6 THE COURT: Sustained. Sustained.

7 Go ahead.

8 Q. You can answer the question.

9 THE COURT: Now there is no question on the table.

10 Next question, please.

11 BY MS. BAILEY:

12 Q. You stated during your deposition that, generally speaking,
13 most members of the general public probably don't know a huge
14 amount about the Census Bureau, other than what is covered in
15 the news, correct?

16 THE COURT: Sustained.

17 MS. FIDLER: Objection.

18 THE COURT: Ms. Bailey, if there is an inconsistent
19 statement, you can impeach with the deposition, but the
20 deposition is technically hearsay.

21 You can't ask questions based on what he testified
22 there. You can ask him questions about his opinion and
23 testimony sitting here today, but the deposition is hearsay and
24 you are not using it for a proper purpose.

25 MS. BAILEY: Understood. Thank you, your Honor.

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1 BY MS. BAILEY:

2 Q. Isn't it correct that, generally speaking, most members of
3 the general public probably don't know a huge amount about the
4 Census Bureau, other than what is covered in the news, correct?

5 A. I would agree with that.

6 Q. And wouldn't you expect that most people would have some
7 opinion of the federal government, correct?

8 A. Yes.

9 (Continued on next page)

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1 BY MS. BAILEY:

2 Q. But respondents in your survey were asked whether they
3 would respond to a census conducted by the federal government,
4 not by the Census Bureau, correct?

5 A. I don't believe that's a correct characterization of the
6 question.

7 MS. BAILEY: Let's take a look at question 2.

8 Q. Respondents were asked whether they would participate in a
9 census conducted by the federal government, correct?

10 A. So, question 1, I believe, you're referring to, I think,
11 provides the adequate information to the respondent. It does
12 use the phrase "by the federal government," but it also
13 explains that this is the Census Bureau that uses that exact
14 phrase. And so, I believe in that question and question 2,
15 which is the follow-up, it's clear that the survey belongs to
16 the Census Bureau but it is being conducted or implemented by
17 the federal government.

18 Q. Isn't it correct that you did not test any alternate
19 wording of question 2 for which you used to measure
20 nonresponsive breakoff where respondents were asked whether
21 they would respond to a census conducted by the Census Bureau
22 rather than the federal government? Correct?

23 A. I have question 8, which I also used to measure breakoff,
24 so I do have another question.

25 MS. FIDLER: Objection. Your Honor, may the witness

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1 finish his answer, please?

2 THE COURT: I think he did.

3 BY MS. BAILEY:

4 Q. Isn't it correct that you did not test any alternate
5 wording of question 2, which you used to measure your initial
6 nonresponse or breakoff rates in which respondents were asked
7 about if the census is conducted by the Census Bureau rather
8 than the federal government? Correct?

9 A. So, my opinion is no, that question 8 is an alternative
10 version of question 2. That's exactly what it is. It's
11 another version asking would you participate in the census in
12 the face of a citizenship question, and it is not question 2.

13 Q. And the roughly 7 percent nonresponse or breakoff rate that
14 you reported and about which you testified extensively, that
15 was calculated as the nonresponse to questions 1 and 2, wasn't
16 it?

17 A. Yes.

18 Q. And isn't it correct that you believe that most respondents
19 to the 2020 census would think of the Census Bureau as part of
20 the political administration?

21 A. Well, I didn't test that specifically, so I don't know at
22 this moment exactly what they would think of the Census Bureau
23 as part of the federal government, political administration,
24 etc. That's not something that I directly tested.

25 Q. Let's take a look at your deposition transcript at page 51,

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1 lines 2 to 6.

2 MS. BAILEY: Sorry. Page 51, lines 2 to 6.

3 Q. And I believe here you testified that you agreed that, it
4 was your opinion that most respondents to the 2020 census would
5 think of the Census Bureau as part of the political
6 administration. Is that an accurate representation of what you
7 testified?

8 A. Well, I'd like to see the full transcript, because I do
9 recall this discussion, and we were talking about President
10 Trump and we were talking about the federal government. So I
11 believe this was, like, the fourth question in a line of me
12 giving other answers. I did not file any objections to my
13 deposition, so if it says, "The Witness: yes," then that's what
14 I said that day. But in order to place it in context, I'd like
15 to sort of, you know, look at that full line of questioning,
16 because I do recall that we had a lot of questions about who
17 was in the federal government and who was -- and how
18 respondents would view the census. I do recall that discussion
19 with you.

20 Q. Are you changing your previous testimony as reflected in
21 the deposition transcript?

22 A. No. I just said the exact opposite of that, that if it
23 says the witness says yes, I agree that I said yes that day.
24 I'm just attempting to provide some context, which is to say we
25 had a long discussion over whether or not respondents view the

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Barreto - Cross

1 census as part of the Trump administration, or did they view it
2 as part of the Department of Commerce, or did they review --
3 believe -- there was a lot of questions, and I'm just trying to
4 remember myself exactly what those previous questions were so
5 that I could see how we arrived here.

6 Q. And didn't you state that it was your opinion that most
7 respondents to the census would generally view the Census
8 Bureau as part of the political administration in office at
9 that time?

10 MS. FIDLER: Objection, your Honor. Asked and
11 answered.

12 THE COURT: Sustained.

13 Q. And you chose the question wording, specifically the
14 reference in question 2, to the federal government adding the
15 citizenship question because in your view it factually
16 represents how the respondents currently view the government?

17 A. That sounds about right.

18 Q. And I believe you testified earlier today that, in your
19 opinion, the citizenship question is sensitive for immigrants
20 and immigrant-adjacent communities, correct?

21 A. Yes.

22 Q. And you testified that citizenship is sensitive not only
23 for Latino communities but across other immigrant communities
24 as well, correct?

25 A. Yes.

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1 MS. BAILEY: I'd like to take a look at table 30,
2 which is PX 70 at this point. I'm sorry. Not question 3,
3 table 3. Thank you.

4 Q. Your survey found a nationally representative breakoff rate
5 from question 1 to question 2 of 7.14 percent, rounded off,
6 correct?

7 A. Yes.

8 Q. But you don't actually know from this data what percentage
9 or proportion are citizens versus noncitizens among those who
10 reported that they would not participate in a census that
11 included a citizenship question, correct?

12 A. Correct.

13 Q. The data that you collected did not include citizenship
14 from respondents, correct?

15 A. Correct.

16 Q. So, if we look down at percentages of African American or
17 white respondents who indicated that they would not respond to
18 a census including a citizenship question, we can't tell what
19 percentage of those would be immigrant or immigrant-adjacent,
20 could we?

21 A. Well, we do ask where you were born and where your parents
22 were born of everyone in the sample, and I know that in one
23 analysis, I did look at African-American foreign-born
24 respondents separately to assess if their rate was higher or
25 lower.

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1 Q. But you didn't collect information to break out citizens
2 versus noncitizens in this analysis, correct?

3 A. No.

4 Q. And the third of the four main sections from your expert
5 report about which you testified contained questions aimed at
6 understanding the degree of trust, correct?

7 A. Yes.

8 Q. And questions 3 and 9 on your survey were specifically
9 designed to try to understand whether different groups did or
10 did not trust the Census Bureau and the Trump administration to
11 protect their personal information, correct?

12 A. I believe that was question 3 specifically.

13 Q. Not questions 3 and 9?

14 A. Well, question 9 was slightly different.

15 Q. Did you not testify that questions 3 and 9 were
16 specifically designed to try to understand whether different
17 groups did or did not trust the Census Bureau and the Trump
18 administration to protect their personal information?

19 A. What I'm just trying to clarify is that your description,
20 which is accurate, is a really good description just of
21 question 3. Question 9 was slightly different. It was about
22 whether or not people were concerned that their information
23 would be given to ICE.

24 Q. Thank you.

25 Let's take a look at question 3 from your survey. The stem

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1 of question 3 states that it's against the law for the Census
2 Bureau to disclose, make public or share personal information,
3 including citizenship status, and that the Census Bureau can
4 only disclose information for the purpose of statistical
5 counts, correct?

6 A. Yes.

7 Q. But then the actual question itself pivots and asks
8 respondents, Do you trust the Trump administration to protect
9 your personal information, including citizenship, or do you
10 think they will share this information, correct?

11 A. Yes.

12 Q. So the actual question itself as opposed to the stem
13 doesn't mention the Census Bureau or the 2020 census, correct?

14 A. Well, the entire item is the question, and it does mention
15 the Census Bureau. So incorrect, I guess.

16 Q. Didn't you state during your deposition that the question
17 itself doesn't mention the Census Bureau or the 2020 census?

18 A. I might have stated that the part with the question mark
19 doesn't mention that, but colloquially we would refer to
20 everything after the "3 period" as the question.

21 Q. And the president's approval ratings during the time of
22 your survey were somewhere in the low 40s as a percentile,
23 correct?

24 A. That could be. I don't recall exactly the numbers. Sounds
25 about right.

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1 Q. Do you recall testifying that that was the rate of the
2 president's approval ratings during your deposition?

3 A. Yeah, I remember that discussion. Yes.

4 Q. And among Latino communities that it's at least 10 points
5 lower than the national average, correct?

6 A. Yes.

7 Q. And neither your survey itself nor the pretesting you
8 performed included an alternate wording asking respondents
9 whether they trust the Census Bureau rather than the Trump
10 administration to protect their data, correct?

11 A. That's correct.

12 Q. And isn't it true that you worded the question in this
13 manner because the perception of respondents is that the Trump
14 administration is pursuing the question? Correct?

15 A. That might have been part of it. I would say that this
16 question, as I was describing earlier, came out of my analysis
17 of the literature review as well as the other census
18 self-reports that had come to light, and many of those things
19 specifically mentioned the current administration as who people
20 thought would gain access to their citizenship status.

21 Q. And isn't it true that, in your opinion, when members of
22 the public are asked questions about trust in the federal
23 government, they exceptionally view that through a partisan
24 lens?

25 A. They view that through the partisanship of the

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1 administration, yes.

2 Q. So would it be accurate to say that, in your view, when a
3 member of the public encounters a question about trust in the
4 federal government, that they view that through a partisan
5 lens?

6 A. I believe we were speaking about, in the deposition, a
7 generic --

8 THE COURT: Don't speak about what you were talking
9 about then.

10 THE WITNESS: OK.

11 THE COURT: Just answer the question today.

12 THE WITNESS: Thank you, your Honor.

13 A. My answer to that would be that when we have a generic
14 question about trust in the federal government, which is a very
15 common political science question on surveys, do you -- I think
16 it goes something like, Generally speaking, do you trust the
17 federal government to do what is right or wrong, that that
18 question -- and there's political science data on this, that
19 that question about trust in government is viewed through the
20 partisanship of the administration, yes.

21 Q. Thank you.

22 MS. BAILEY: Let's take a look at table 8, which has
23 now been admitted as PX 672.

24 Q. So your survey found, as I read it, that 63.9 percent of
25 African Americans think the Trump administration will share

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1 their information, correct?

2 A. Yes.

3 Q. But the share of African Americans nationally who are
4 immigrant or immigrant-adjacent isn't anywhere near 63 percent,
5 is it?

6 A. I don't believe so, no.

7 Q. And nearly 40 percent of white respondents stated that they
8 think the Trump administration will share their data, right?

9 A. Yes.

10 Q. But the share of whites in America who are immigrant or
11 immigrant-adjacent isn't nearly 40 percent, is it?

12 A. I don't believe so.

13 Q. And your survey did not include any follow-up or
14 qualitative component to determine why respondents reported a
15 lack of trust in the administration to maintain the
16 confidentiality of their data, correct?

17 A. Well, I did include one follow-up question, which was
18 question 9.

19 Q. I believe you -- you did not include any follow-up
20 qualitative component to determine why respondents reported a
21 lack of trust in the administration, correct?

22 A. That's correct.

23 Q. And isn't it true that you would attribute the fact that
24 the highest rate of nonresponse is among black respondents to
25 the general current political climate with respect to African

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1 Americans in the Trump administration?

2 A. Can you repeat that?

3 Q. Certainly. Isn't it true that you would attribute the
4 highest, the fact that the highest rate of nonresponses among
5 blacks in your survey to the general political climate with
6 respect to African Americans in the Trump administration?

7 A. Well, I think as we just discussed, I didn't have any sort
8 of qualitative follow-up to that to know exactly why. This
9 table just reports the rates.

10 MS. BAILEY: Let's take a look at page 61, lines 4
11 through 18, of the deposition transcript.

12 Q. Here, I believe you were asked what would cause a lower
13 level of trust among African Americans than other groups. In
14 the highlighted text, you state, "Whatever the general sort of
15 current mood or sense is would, vis a vis African Americans in
16 the Trump administration would likely be the reasons."

17 A. OK.

18 Q. So isn't it correct that there you're attributing --

19 MS. FIDLER: Your Honor, this is improper impeachment.
20 He isn't testifying inconsistently.

21 THE COURT: Sustained.

22 Q. Your survey then attempted to simulate what a possible
23 nonresponse follow-up might look like and whether it would be
24 effective in obtaining participation, correct?

25 A. Yes.

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1 Q. And you describe, in your expert report, your simulated
2 nonresponse follow-up as essentially a recontact effort,
3 correct?

4 A. Yeah, I think this morning or early this afternoon I
5 described it as an approximation or simulation of some of the
6 factors that go into the nonresponse follow-up.

7 Q. But your simulated follow-up took place later during the
8 same phone call, correct?

9 A. Yes.

10 Q. So you didn't actually recontact anyone at a later day or
11 at a later time, correct?

12 A. No. Within the same survey.

13 Q. And so that recontact that you describe occurred later in
14 the same conversation, after the intervening discussion about
15 trust in the Trump administration, correct?

16 A. That was one of the questions, and then as we reviewed,
17 there was questions about household size. So there's a couple
18 of questions in between and then the recontact occurred,
19 correct.

20 Q. My question is the simulated recontact occurred after the
21 discussion about the trust in the Trump administration,
22 correct?

23 A. Yes.

24 Q. And you observed an increase in reported nonparticipation
25 among every single racial or ethnic group included in the

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1 survey, correct?

2 A. Yes.

3 MS. BAILEY: Let's just take a look at questions 7 and
4 8.

5 Q. Sir, I believe you testified that your, the breakoff or
6 nonresponse rates --

7 MS. BAILEY: I'm sorry. Can we look at 7 and 8?
8 Thank you.

9 Withdrawn.

10 Q. Question 7 asks if the government decides to, in 2020 to
11 include a citizenship question, will respondents participate,
12 correct?

13 A. That is question 8, correct.

14 Q. Sorry. Question 7 is without a citizenship question,
15 correct?

16 A. Correct.

17 Q. And so the nonresponse or breakoff rates by comparing
18 question 2 to questions 7 or 8 is how you calculated the basis
19 of your simulated follow-up, correct?

20 A. Yes.

21 Q. And you found that incidence of nonresponse went up between
22 question 2 and question 8, right?

23 A. Correct. The overall combined nonresponse rate is higher
24 in the Q1 to Q8 comparison than the Q1 to Q2.

25 Q. So that means a greater number of individuals are reporting

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1 that they would not participate in the census, correct?

2 A. Yes.

3 Q. And that applies for every demographic group, correct?

4 A. Yes.

5 Q. But in the actual census environment, I believe you
6 testified that you would expect the nonresponse follow-up
7 efforts to result in at least some increased response rate,
8 correct?

9 A. Yes.

10 Q. And all of your simulated follow-up was performed in the
11 context of a single conversation, correct?

12 A. Yes.

13 MS. BAILEY: No further questions.

14 THE COURT: All right.

15 MS. FIDLER: No redirect.

16 THE COURT: Dr. Barreto, you may step down.

17 THE WITNESS: Thank you.

18 (Witness excused)

19 THE COURT: That was unexpected. I take it we're done
20 with witnesses for the day.

21 MR. COLANGELO: Yes, your Honor. No more witnesses
22 for today. We could discuss the exhibits that we tabled this
23 morning if your Honor would like.

24 THE COURT: I think that would make sense. Before we
25 do that, a couple of housekeeping questions or matters.

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1 First, a reminder just to docket Mr. Thompson's
2 amended affidavit. We did find it among those that had been
3 emailed to chambers, but I don't think it's been docketed yet
4 and should be now since he has testified.

5 First of all, in looking at plaintiffs' exhibit list,
6 all of the exhibits, if I'm not mistaken, from 1 to 153 are
7 Bates-stamped with AR. Does that mean that of all those are
8 now in evidence because they're part of what everybody agrees
9 is the administrative record?

10 MR. COLANGELO: There's at least one between 1 and 150
11 where the parties are still discussing whether that is in the
12 AR. I believe that's PX 9. It's been admitted into evidence,
13 but the parties don't have agreement yet that that's AR.

14 THE COURT: But everything else between 1 and 153
15 everybody agrees is part of the administrative record?

16 MR. COLANGELO: I think PX 16 -- PX 15, I believe, we
17 don't yet have agreement that that is AR.

18 THE COURT: But that's also in the record, or no?

19 MR. COLANGELO: No, that has not yet been admitted,
20 your Honor.

21 THE COURT: OK. I guess maybe this underscores the
22 next point, which is I'm not sure that the letter you filed
23 last night was precisely what I was looking for, which was
24 really a single comprehensive list of the exhibits that
25 everybody agrees are in evidence or should be admitted into

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1 evidence. Just so I don't have to juggle different lists and
2 figure out if there is overlap, whether they're fully
3 coextensive, and so forth, I think it would be helpful to do
4 that, and perhaps in that list identifying those that everybody
5 agrees are part of the administrative record versus those as to
6 which there's disagreement as opposed to those that everybody
7 agrees are outside the administrative record would be helpful
8 as well.

9 That brings me to the next point, which is the
10 question of a process to adjudicate any disputes with respect
11 to whether a document is or is not part of the administrative
12 record. I don't know where the parties' discussions on that
13 issue stand. That strikes me as something that you should
14 probably tee up sooner rather than later just so that, in your
15 posttrial briefing, perhaps everybody is on the same page with
16 respect to what the record is.

17 MR. FREEDMAN: Your Honor, we sent the defendants a
18 list last night. I know while we were in court, Ms. Federighi
19 sent me a response, but I haven't had time to analyze it. We
20 can certainly get the Court that information by the end of the
21 weekend.

22 THE COURT: Any sense of how many documents we're
23 talking about that are likely in dispute.

24 MR. FREEDMAN: Very few.

25 THE COURT: OK.

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Ms. Bailey.

MS. BAILEY: That's correct.

THE COURT: OK. Why don't you, by Sunday, submit a letter updating me on where that stands and what your proposal is for resolving any disagreements would be, recognizing that there's an interest in resolving that sooner rather than later, maybe doing simultaneous briefing on it. I don't think extensive briefing is necessary. Or perhaps you think we could include it in the posttrial briefing, in which case we don't need to do it immediately, but why don't you meet and confer with respect to that so that, A, we know what documents are in dispute, and B, we can discuss Tuesday morning a process for resolving those disputes. All right?

MR. FREEDMAN: Yes, your Honor. To be clear, without having reviewed the letter, there was only one document that was in dispute, which is also subject to a clawback claim, so I think probably some briefing on that is probably appropriate.

THE COURT: OK. The point remains, by Sunday submit a letter, after conferring with one another, with respect to what, if anything, is in dispute and how you would propose to resolve it, including how quickly you think it needs to be resolved, and I will then take that into consideration. I'm sorry for intruding on everybody's three-day weekends, but it is what it is; you'll be intruding on mine.

Next, you're going to file a letter regarding the

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1 deposition videos and a link to those. Is that correct?

2 MR. HO: That's correct, your Honor. We'll file a
3 notice this afternoon that states the links for where those
4 videos can be found.

5 THE COURT: All right. And then the confusion earlier
6 with respect to Plaintiffs' Exhibit 668, was there a 668 that
7 came in that I somehow missed?

8 MR. COLANGELO: No, your Honor. I think our technical
9 assistant may have been holding that for another document that
10 may have been about to come in, had already numbered the ones
11 that we anticipated putting in during Dr. Barreto's
12 examination, and he did not want us to mess up his entire
13 numbering system on the fly.

14 THE COURT: All right. Very good. I'm glad to hear
15 that I was not missing something.

16 With that, I'm happy to hear argument now with respect
17 to the 401, 403 exhibits that are in dispute or to take your
18 lead on that.

19 MR. COLANGELO: Thank you, your Honor. I'll move to
20 the podium to avoid feedback.

21 THE COURT: Thank you.

22 These are 192 to 195, that list with your letter of
23 last night, is that correct?

24 MR. COLANGELO: That's correct, your Honor. I believe
25 there are eight, and the first four, PX-192 to 195. These are

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1 all copies of the secretary's calendars that were produced in
2 response to a discovery request in this litigation. 192 is the
3 calendar for the secretary.

4 THE COURT: If you're telling me he had beach week,
5 I'm going to be really --

6 Sorry. I couldn't resist. Go back to what you were
7 saying.

8 MR. COLANGELO: 192 is the calendar for the
9 secretary's conference room for 2018 showing census meetings.
10 193 is the secretary's calendar for 2017 showing census-related
11 meetings. 194 is the secretary's calendar for 2018 showing
12 census meetings, and 195 is the calendar, again, for the
13 conference room, the secretary's conference room for 2017.

14 There are a number of events and dates in the
15 litigation that relate to meetings that officials within the
16 commerce department and the Census Bureau held or conversations
17 that they had. Those meetings are reflected in these
18 calendars. They're cross-referenced in many of the other
19 documents, and we think they're clearly relevant and
20 noncumulative.

21 THE COURT: All right. Defense counsel. Relevance, I
22 wouldn't sweat. As I said, I'll either decide they're relevant
23 or not, but tell me why they shouldn't be admitted.

24 MS. WELLS: I apologize for having Mr. Colangelo go
25 though that explanation. We withdraw our objections to 192

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1 through 195.

2 THE COURT: All right. Those are admitted without
3 objection.

4 (Plaintiffs' Exhibits 192-195 received in evidence)

5 THE COURT: Next.

6 MR. COLANGELO: PX-530, your Honor, is the executive
7 order establishing the presidential advisory commission on
8 election integrity. Kris Kobach was the vice chair of the
9 advisory commission. Obviously, Mr. Kobach's role is something
10 that has arisen in the course of this litigation. We think
11 that his role as a vice chair and as a presidential adviser on
12 that commission and in particular the subject matter of that
13 commission is relevant for litigation. So again, we don't see
14 the 401 or 403 objection to 530.

15 MS. WELLS: Your Honor, I mean, Mr. Kobach's name did
16 come up in this litigation, but not in the context of that
17 presidential commission. That executive order is not related
18 to this case.

19 THE COURT: All right. So that I understand, you're
20 arguing it's irrelevant, but is there any prejudice from
21 admitting it and allowing me to consider it? If I decide it's
22 irrelevant, then it is irrelevant.

23 MS. WELLS: I think it just confuses the issues of
24 what's actually being presented here versus what that executive
25 order is about, so we would say that it is prejudicial as well.

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1 THE COURT: All right. I'm confident in my ability
2 not to be confused, so it's admitted.

3 (Plaintiffs' Exhibit 530 received in evidence)

4 THE COURT: Next.

5 MR. COLANGELO: Your Honor, PX-479 is a public
6 statement from Secretary Ross posted on the commerce website
7 regarding a range of immigration policy matters. One of the
8 *Arlington Heights* factors for proving intentional
9 discrimination through circumstantial evidence is contemporary
10 comments by decision-makers. These comments were made at the
11 exact time the decision to add a citizenship question was being
12 considered and executed. The plaintiffs are entitled to argue
13 that these and other statements are relevant evidence of that
14 *Arlington Heights* factor. It's a central part of the *Arlington*
15 *Heights* inquiry.

16 THE COURT: Counsel, I understand you may disagree on
17 the merits whether these shed any light on that front, but why
18 are they not entitled to at least make the argument?

19 MS. WELLS: Again, your Honor, I mean, these press
20 statements, they deal about immigration policies generally.
21 It's prior to the DOJ letter having been sent over from, you
22 know, to the Department of Commerce. It's, maybe, during the
23 time, a couple months ahead of that letter having been sent,
24 and again, we think this would be prejudicial because it's
25 somewhat confusing and clouds the issues.

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1 THE COURT: All right. The objection is overruled.
2 That is admitted as well. I intimate no view on whether and to
3 what extent it is evidence under the *Arlington Heights* factors,
4 but I certainly think plaintiffs are entitled to make the
5 argument.

6 (Plaintiffs' Exhibit 479 received in evidence)

7 THE COURT: Next.

8 MR. COLANGELO: PX-333 is a Census Bureau press
9 release. It's from the Census Bureau's website. It announces
10 the results of the postenumeration survey following the 2010
11 census, and your Honor has heard testimony this week regarding
12 postenumeration survey. This is a useful exhibit that helps
13 illustrate the results of the 2010, postenumeration survey
14 following the 2010 census.

15 THE COURT: All right. I'm not sure what the harm is.
16 Am I wrong, but wasn't there an actual Census Bureau report?

17 MR. COLANGELO: Yes, your Honor. There have been
18 additional reports regarding the postenumeration survey
19 following the 2010 census. The press release contains
20 additional information that, as I understand it, is not
21 identically captured in this report. It also seems perfectly
22 relevant and otherwise nonprejudicial or burdensome to let this
23 in.

24 THE COURT: Counsel.

25 MS. WELLS: I mean, I think your Honor put your finger

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1 on it. The purpose of our objection was this was not an
2 official statement. There are analyses of the postenumeration
3 surveys that are more -- captured in more official reports.
4 This is really a press release.

5 THE COURT: All right. But it is an official
6 statement, or more relevant for our purposes, a statement of
7 the defendant, correct?

8 MS. WELLS: It is.

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

10 (Plaintiffs' Exhibit 333 received in evidence)

11 THE COURT: Next.

12 MR. COLANGELO: Last one is PX-296. This is the
13 commerce department's brief filed in January 1980 in the U.S.
14 District Court for the District of Columbia in *F.A.I.R. v.*
15 *Klutznick*. It contains the commerce department's position
16 regarding whether the addition of a citizenship question would
17 jeopardize the accuracy of a census.

18 THE COURT: All right. I assume I can take judicial
19 notice of this no matter what.

20 MR. COLANGELO: Yes.

21 THE COURT: But I take it you want to admit it as a
22 statement of a party opponent.

23 MR. COLANGELO: Yes, your Honor.

24 MS. WELLS: I would actually argue that it's not a
25 statement of the party opponent. It's a brief written by the

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1 Department of Justice representing the Department of Commerce.
2 Therefore, it's a statement on behalf of the United States by
3 the Department of Justice, who is not a party. And I agree
4 that you can take judicial notice of this.

5 MR. COLANGELO: Your Honor, there was no hearsay
6 objection to this one. They objected only on 401 and 403
7 grounds.

8 THE COURT: I think there's no real dispute that I can
9 consider it. I think given that I'll admit it and proceed from
10 there.

11 (Plaintiffs' Exhibit 296 received in evidence)

12 THE COURT: Was that it?

13 MR. COLANGELO: Yes, your Honor.

14 THE COURT: All right. Any other items that we need
15 to deal with?

16 MR. COLANGELO: Nothing for the plaintiffs, your
17 Honor.

18 THE COURT: I think we shut off your mike.

19 MR. COLANGELO: Nothing for the plaintiffs, your
20 Honor.

21 THE COURT: There we go.

22 Tuesday, when we reconvene after the holiday, we have
23 Warshaw, Handley, and Dr. Abowd. Is that correct?

24 MR. COLANGELO: That's correct. You have Professor
25 Warshaw's testimony in writing. You'll have Dr. Handley live,

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1 and then, obviously, Dr. Abowd live.

2 THE COURT: Do you anticipate that order?

3 MR. COLANGELO: I don't know yet, your Honor, the
4 order as between those three witnesses.

5 THE COURT: And any estimate whether you think those
6 three will be done on Tuesday or if we're likely to go into
7 Wednesday?

8 MR. COLANGELO: Your Honor, we think that our
9 examination of the three witnesses can conclude on Tuesday, but
10 we don't know how long the United States will take. And then
11 we'll have an opportunity to examine Dr. Abowd again, so we
12 can't confirm that we'll be concluded with all three, but I
13 think our initial examination will be done.

14 THE COURT: All right. Very good.

15 Anything from defendants?

16 MS. BAILEY: No, your Honor.

17 THE COURT: All right. I think we can discuss on
18 Tuesday or Wednesday, whenever trial ends, but the more I think
19 about the briefing schedule between not wanting to ruin your
20 or, more important, your families' Thanksgiving vacation and
21 the fact that it might be helpful for me to get the posttrial
22 briefing sooner and because it looks like trial will earlier
23 next week than originally anticipated, I'm sort of inclined to
24 have you file your posttrial briefs, the first round at least,
25 before the holiday -- namely, by the Wednesday before

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1 Thanksgiving -- recognizing it will ruin the next week of your
2 lives but won't ruin the holiday; my holiday will be impacted
3 more than yours. We can talk about it Tuesday, but I wanted to
4 just put that out there so that you can work on things over the
5 weekend if you choose to do so. And again, I know you have
6 briefing due elsewhere as well.

7 With that, I wish everybody a very pleasant and
8 relaxing weekend. I will see you on Tuesday.

9 Thank you.

10 (Adjourned to November 13, 2018, at 9:00 a.m.)
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