

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FAIR LINES AMERICA FOUNDATION, INC.,
2308 Mount Vernon Ave. Ste. 716
Alexandria VA 22301-1328

Plaintiff,

v.

Civil Case No. _____

UNITED STATES DEPARTMENT OF
COMMERCE,
1401 Constitution Ave NW
Washington, DC 20230;

and

UNITED STATES BUREAU OF THE CENSUS,
4600 Silver Hill Road
Washington, DC 20233-3700;

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES Plaintiff, Fair Lines America Foundation, Inc. (“Plaintiff” or “Fair Lines”), and states as follows:

INTRODUCTION

1. Fair Lines brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, challenging the United States Department of Commerce’s and the United States Census Bureau’s (“Defendants”) failure to fulfill Plaintiff’s March 31, 2021 request for records relating to the United States Decennial Census of 2020.

2. Fair Lines seeks disclosure of records in the possession of the Census Bureau containing summaries, “tabulations[,] and other statistical materials,” 13 U.S.C. § 8(b), derived

from, summarizing, and/or otherwise relating to the original underlying group quarters population data for Census Day, April 1, 2020, received in response to the Census Bureau's 2020 Group Quarters Enumeration questionnaire regarding institutional living facilities or other housing facilities. Upon information and belief, these records are also in the possession of DOC which is responsible for executing the 2020 Census and oversees the work of the Census Bureau as part of DOC.

3. Plaintiff seeks declaratory relief that Defendants are in violation of FOIA for failing to fulfil Plaintiff's request for records and failing to respond to Plaintiff's request for expedited processing of the request. Plaintiff also seeks injunctive relief that Defendants immediately and completely comply with Plaintiff's FOIA request. Further, Plaintiff seeks fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E).

JURISDICTION AND VENUE

4. This Court has both subject matter and personal jurisdiction over the parties and claims pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331. Venue lies with this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e)(1).

5. Fair Lines is a nonprofit corporation incorporated in Virginia, organized under section 501(c)(3) of the Internal Revenue Code, with its principal place of business in Alexandria, Virginia.

6. The DOC is headquartered in Washington, D.C., and its principal office is located at 1401 Constitution Ave, NW.

7. The Census Bureau is headquartered in Washington, D.C., and its principal office is located at 4600 Silver Hill Road.¹

¹ The Census Bureau's website lists its address 4600 Silver Hill Road as being located both in Washington, D.C. with a zip code of 20233 and in Suitland, Maryland with a zip code of 20746.

PARTIES

8. Plaintiff Fair Lines America Foundation is a Section 501(c)(3) non-profit organization committed to educate the public on fair and legal apportionment and redistricting through comprehensive data gathering, processing, and deployment; dissemination of relevant news and information; and strategic investments in academic research and litigation. To further this mission, it also files FOIA requests to help promote open and transparent government regarding the federal government's decisions and actions taken regarding enumeration, apportionment, and redistricting.

9. Defendant the U.S. Department of Commerce ("DOC") is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1), and oversees the execution of the 2020 Census, and has possession, custody, and control of records to which Fair Lines seeks access pursuant to FOIA.

10. Defendant the U.S. Census Bureau is an agency within, and under the jurisdiction of, the Commerce Department, and a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Census Bureau is responsible for planning and administering the 2020 Census, and has possession, custody, and control of records to which Fair Lines seeks access pursuant to FOIA.

STATEMENT OF FACTS

11. The DOC and Census Bureau are tasked with overseeing and administering the decennial censuses of population and housing, including the 2020 Census, which functions are

<https://www.census.gov/about/contact-us.html> (last accessed on May 15, 2021). Either way, because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Washington, D.C., DOC is located in D.C., and FOIA makes the U.S. District Court for the District of Columbia a universal venue for adjudicating FOIA lawsuits, *see* 5 U.S.C. § 552(a)(4)(B), this Court has jurisdiction over this action, and venue is appropriate here.

authorized by the Constitution and by laws codified as title 13 of the United States Code.

12. Fair Lines is a non-profit organization interested in openness and transparency in government, with an emphasis on educating the public and ensuring fair and legal enumeration, apportionment, and redistricting processes. To that end, Fair Lines seeks to review and publicize records in the possession of Defendants in light of the Census Bureau's recent public announcements that it has experienced difficulties and various concerns regarding the gathering and counting of group quarters data for the 2020 Census due to the COVID-19 pandemic. Fair Lines also seeks to understand the impact of group residential facilities generally on the overall population tabulations of various states.

13. The FOIA, 5 U.S.C. § 552, requires federal agencies to release requested public records unless a statutory exemption applies.

14. An agency has twenty business days to respond to a request, including a notification to the requesting party of the agency's determination of whether to fulfil the request and the requester's right to appeal the agency's determination to the head of the agency. 5 U.S.C. § 552(a)(6)(A)(i).

15. An agency may delay its response only in "unusual circumstances" by providing written notice to the requesting party of the unusual circumstances and identifying a date when "a determination is expected." *Id.* § 552(a)(6)(B)(i). "No such notice shall specify a date that would result in an extension for more than ten working days" *Id.*

16. Prior to submitting the FOIA request at issue in this Complaint, Fair Lines sent a FOIA request dated February 19, 2021 to the Census Bureau (the "February 19 Request") requesting records "for each institutional living facility or housing facility from which a completed 2020 Group Quarters Enumeration questionnaire was received" that demonstrate "the

number of residents reported by each living or housing facility nationwide in response to the Census Bureau's request for group quarters population data" A true and correct copy of the February 19 Request is included as Exhibit A and is incorporated hereto for all purposes.

17. On February 22, 2021, the Census Bureau acknowledged receipt of the February 19 Request and stated that the search for responsive records would be initiated. The Bureau assigned it the tracking number DOC-CEN-2021-000987.

18. On March 12, 2021, Fair Lines received a response from the Census Bureau's Chief FOIA Officer, Vernon E. Curry, denying the production of all records sought in the February 19 Request pursuant to the exemption under 5 U.S.C. § 552(b)(3). *See* Exhibit B ("March 12, 2021 Denial of Fair Lines' February 19 Request"). Specifically, the Bureau relied upon 13 U.S.C. § 9 for its denial of the February 19 Request. Exhibit B at 1. The Bureau informed Fair Lines of its right to appeal this denial within 90 calendar days of the date of the response letter.

19. In response to the March 12 Denial of the February 19 Request, on March 31, 2021, Fair Lines submitted a new FOIA request² to the Census Bureau ("the Request") which is the subject of this Complaint. A true and correct copy of the Request is included as Exhibit C and is incorporated hereto for all purposes. While substantively similar to the February 19 Request, the language of the Request clarifies that Fair Lines only seeks records that the Secretary of Commerce is explicitly authorized to provide under the Census Act, and does *not* request records exempt from disclosure under the Census Act. Specifically, Fair Lines requests:

² *See generally Ning Ye v. Holder*, 624 F. Supp. 2d 121, 124 n.2 (D.D.C. 2009) ("Should petitioner wish to obtain information from the [agency], he could (re)submit [his requests], ensure receipt, and properly begin the process (anew)."); *see also Toensing v. U.S. Dep't of Justice*, 890 F. Supp. 2d 121, 138 (D.D.C. 2012) ("In this Circuit, filing a new, duplicative FOIA request has the potential to cure certain defects of a prior FOIA request, such as defects with the FOIA request itself.").

All summaries, “tabulations[,] and other statistical materials,” 13 U.S.C. § 8(b), derived from, summarizing, and/or otherwise relating to the original underlying group quarters population data for Census Day, April 1, 2020, received in response to the Census Bureau’s 2020 Group Quarters Enumeration questionnaire regarding institutional living facilities or other housing facilities. In requesting these summaries, “tabulations[,] and other statistical materials,” we do not seek disclosure of the underlying raw group quarters population data itself as originally “reported by, or on behalf of, any particular respondent” to the Bureau, 13 U.S.C. § 8(b), nor do we seek any “publication whereby the data furnished by any particular establishment or individual under this title can be identified,” 13 U.S.C. § 9(a)(2); instead, we seek records *deriving from* or summarizing the originally reported raw data, and/or records with data that has been *reformulated* or *repurposed* by the Bureau in a form such that the underlying data can no longer be identified with a particular establishment or individual. For instance, any statewide aggregate total group quarters population tabulations of data that exclude, omit, or redact the original group quarters numbers as reported by, or on behalf of, individual institutions (i.e., tabulations where the Bureau excluded the underlying individualized raw data, or where such data can be redacted from the tabulations while producing the aggregate population totals) would be responsive to this request.

Exhibit C at 2-3.

20. The Request also includes an application for expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)-(iii) and 15 C.F.R. § 4.6(f), noting Plaintiff’s compelling need for the records and the urgency of informing the public of any irregularities in Census Bureau data given the time-sensitive nature of the redistricting process before the impending election season, as well as the decennial nature of the Census Bureau’s data collection. *See* Exhibit C at 6-7. The Request also included an application for fee waiver or limitation of fees because it is likely to contribute significantly to public understanding of the operations of the Government and is for non-commercial purposes. *Id.* at 5-6.

21. On April 7, 2021, having received no confirmation that the Request was received by the Census Bureau, Plaintiff’s counsel sent an email to the Census Bureau inquiring regarding the status of the Request. Exhibit D (“Plaintiff’s Correspondence to Census Bureau”). In response, Plaintiff received automated email messages notifying it that the Request had been

assigned tracking number DOC-CEN-2021-001311.³ After Plaintiff's counsel emailed the Census Bureau to obtain clarity regarding the messages it received from the Bureau, the Bureau responded on April 13, 2021, that the Request had been received and the Bureau's search was underway. *See* Exhibit F ("Correspondence from Census Bureau Regarding the Request").

22. Since the April 13, 2021 email correspondence from the Census Bureau, there have been no further communications from Defendants regarding the Request.

23. Defendants have failed to comply with the statutory deadline of twenty business days, as required by FOIA under 5 U.S.C. § 552(a)(6)(A). And, though no written notice of "unusual circumstances" providing for a ten-business-day extension under 5 U.S.C. § 552(a)(6)(B) has been provided, that deadline has now expired as well. More than thirty business days have passed since Fair Lines filed the Request on March 31, 2021. No records have been produced and Defendants have given no indication as to whether there are responsive records related to the Request.

24. By exceeding the 20-business-day window for a determination whether to comply with the Request without a response to Plaintiff's application for expedited processing, Defendants have also failed to respond to Plaintiff's request for expedited processing "within 10

³ Confusingly, the Census Bureau created two different tracking numbers for this single Request, causing Plaintiff to receive two separate automated messages on April 7, 2021 with the two tracking numbers. Exhibit E ("Automated Messages from Census Bureau"). Additionally, the automated messages both indicated that the Request had been "submitted" on April 7, 2021, even though the request was submitted on March 31, 2021 to the Census Bureau's designated email address for submitting FOIA requests, Census.efoia@census.gov. Plaintiff's counsel sent an email on April 8, 2021 inquiring about these discrepancies, but did not receive a response. Then on April 12, 2021, Plaintiff received another automated message saying that one of the requests had been "processed with the following final disposition: Duplicate Request." Plaintiff's counsel again followed up with the Bureau to inquire about the status of its Request and to follow up on its unanswered questions from the April 8 email, to which the Bureau on April 13, 2021 only provided a partial answer that the request was evidently forwarded to DOC, but was then closed as a duplicate request because the Census Bureau determined it was better suited to process the Request. *See* Exhibit F ("Correspondence from Census Bureau Regarding the Request").

days after the date of the request” or “in a timely manner.” 5 U.S.C. § 552(a)(6)(E)(ii)-(iii). This failure to respond to an application for expediting the request in the statutory time frame is thus also “subject to judicial review,” *id.*,⁴ along with its failure to timely comply with FOIA’s twenty-day determination deadline.

25. Because Defendants have not complied with FOIA’s explicit statutory obligations and timelines, Plaintiff has constructively exhausted all administrative remedies and may proceed directly to this Court. *See Citizens for Responsibility & Ethics in Washington v. Fed. Election Comm’n*, 711 F.3d 180, 186 (D.C. Cir. 2013) (a requestor exhausts its remedies unless, within the relevant time period, the agency “inform[s] the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions”); *id.* at 189 (“If the agency does not adhere to FOIA’s explicit timelines, the ‘penalty’ is that the agency cannot rely on the administrative exhaustion requirement to keep cases from getting into court.”).⁵

⁴ *See Wash. Post v. Dep’t of Homeland Sec.*, 459 F. Supp. 2d 61, 65 (D.D.C. 2006) (noting that 5 U.S.C. § 552(a)(6)(E) mandates expedited processing if “the request is made ‘by a person primarily engaged in disseminating information,’ and has an ‘urgency to inform the public concerning actual or alleged Federal Government activity’”) (*vacated as moot by subsequent consent motion, Wash. Post v. Dep’t of Homeland Sec.*, No. 06-5337, 2007 U.S. App. LEXIS 6682, at *1 (D.C. Cir. Feb. 27, 2007)); *id.* at 76 (granting the plaintiff’s motion for a preliminary injunction to “complete the processing of the plaintiff’s [] FOIA requests and produce or identify all responsive records within 10 days of the date” of the opinion); *Aguilera v. FBI*, 941 F. Supp. 144, 152-53 (D.D.C. 1996) (granting a preliminary injunction and mandating expedited release of documents).

FOIA also grants courts jurisdictional authority to impose “concrete deadlines” on any agency that “delay[s]” the processing of an expedited FOIA request beyond what arguably is “as soon as practicable.” *See Elec. Privacy Info. Ctr. v. Dep’t of Justice*, 416 F. Supp. 2d 30, 38 (D.D.C. 2006) (granting a preliminary injunction and ordering expedited processing and disclosure of documents concerning the Bush Administration’s policy of conducting surveillance of domestic communications); *see also id.* at 39 (opining that if an agency fails to meet the “twenty-day deadline applicable to standard FOIA requests” it “presumptively also fails to” meet the expedition standard).

⁵ *See also* 5 U.S.C. § 552(a)(6)(C)(i) (“Any person making a request to any agency for

26. Plaintiff has a statutory right of access to the records it seeks, and there is no legal basis for Defendants to withhold those documents.

27. To date, Fair Lines has not received any documents from Defendants in response to its Request, nor has it received any of the statutorily required communications or notices from Defendants.

COUNT I

Violation of FOIA, 5 U.S.C. § 552; Failure to Produce Records; Failure to Respond to and Grant Request for Expedited Processing of Request

28. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

29. Plaintiff properly requested records in its March 31, 2021 Request and the requested records are within Defendants' custody and control.

30. Defendants have failed to 1) make and communicate a determination whether to comply with Plaintiff's request and 2) produce any of the records pursuant to the Request, and has made no claim for a statutory exemption or extension.

31. Defendants have also failed to respond to Plaintiff's request for expedited processing "within 10 days after the date of the request," 5 U.S.C. § 552(a)(6)(E)(ii)(I) or "in a timely manner." 5 U.S.C. § 552(a)(6)(E)(iii). *See also* 15 C.F.R. § 4.6(f)(iv)(4) ("Within ten *calendar* days of its receipt of a request for expedited processing, the proper component shall decide whether to grant it and shall notify the requester of the decision.") (emphasis added).

32. Defendants, by failing to produce and improperly withholding the requested agency records, and failing to timely respond to and grant Plaintiff's request for expedited

records . . . shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph."); *Nurse v. Sec'y of the Air Force*, 231 F. Supp. 2d 323, 328 (D.D.C. 2002) ("The FOIA is considered a unique statute because it recognizes a constructive exhaustion doctrine for purposes of judicial review upon the expiration of certain relevant FOIA deadlines.").

processing, have violated FOIA's plain language. *See* 5 U.S.C. §§ 552(a)(3)(A), (a)(4)(B), (a)(6)(E)(ii)-(iii).

33. Plaintiff has exhausted all applicable administrative remedies with respect to the Defendants' failure to respond to the Request. 5 U.S.C. § 552(a)(6)(C)(i).

34. Accordingly, Plaintiff is entitled to injunctive and declaratory relief with respect to the disclosure and release of the records pursuant to the Request.

PRAYER FOR RELIEF

Wherefore, Plaintiff, Fair Lines America Foundation, prays for the following relief:

1. Declare that Defendants' failures to 1) timely respond with a determination whether to comply with Plaintiff's Request and 2) disclose the records responsive to Plaintiff's Request within the statutory time frame violates FOIA, 5 U.S.C. §§ 552(a)(6)(A)(i), (a)(3)(A);

2. Declare that Defendants' failure to respond to Plaintiff's request for expedited processing within the statutory time frame violates 5 U.S.C. § 552 (a)(6)(E)(ii)(I) and 15 C.F.R. § 4.6(f)(iv)(4);

3. Order Defendants to immediately make and communicate a determination to Plaintiff in response to Plaintiff's Request, *see* 5 U.S.C. § 552(a)(6)(A);

4. Order Defendants to expeditiously conduct an adequate search for all records responsive to Plaintiff's Request in accordance with 5 U.S.C. § 552(a)(3)(C) at no cost to Plaintiff;

5. Preliminarily and permanently enjoin Defendants to promptly complete the processing and response to Plaintiff's Request, and to identify and produce all responsive records not demonstrated by Defendants to be properly exempt from disclosure within 10 days of the date of the Court's Order;

6. Preliminarily and permanently enjoin Defendants from continuing to improperly withhold all non-exempt records responsive to the Request from Fair Lines;
7. Maintain jurisdiction over this action to ensure that Defendants properly and lawfully responds to the Request and every order of this Court to ensure that no responsive records are withheld;
8. Award Plaintiff its litigation costs and reasonable attorney's fees pursuant to 5 U.S.C. § 552(a)(4)(E); and
9. Grant any and all other relief that the Court may deem just and proper.

Dated: May 18, 2021.

Respectfully submitted,

/s/ Jason Torchinsky

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that, on this 18th day of May 2021, the foregoing Complaint was filed electronically with the Clerk of Court using the CM/ECF system. The following parties were served by USPS Certified, Return Receipt Mail on May 18th.

United States Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230;

and

United States Bureau of the Census
4600 Silver Hill Road
Washington, DC 20233-3700

And, pursuant to Federal Rule of Civil Procedure 4(i), a copy of the summons was sent and served via Certified Mail, Return Receipt on May 18th to the following:

Attorney General Merrick Garland
c/o Assistant U.S. Attorney of Administration
Justice Management Division
950 Pennsylvania Ave. NW, Room 1111
Washington, D.C. 20530

Channing D. Phillips
Acting United States Attorney for the District of Columbia
Civil Process Clerk
555 4th St. N.W.
Washington, D.C. 20530

/s/ Jason Torchinsky
Jason Torchinsky (D.C. Bar No. 976033)
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15405 John Marshall Highway
Haymarket, VA 20169
Phone: (540) 341-8808
Counsel for Plaintiff

Exhibit A

VIA ONLINE PORTAL

February 19, 2021

ATTN: FOIA Office
Vernon E. Curry, PMP, CIPP/G
U.S. Census Bureau, Room 3J235
4600 Silver Hill Road
Washington, DC 20233-3700
Census.efoia@census.gov

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

Fair Lines America Foundation, Inc. (“Fair Lines”) makes the following noncommercial request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, 15 C.F.R. § 4.1 *et seq.*, and any other implementing regulations of your agency.

Please note that this request should be treated as separate from Fair Lines’ February 18, 2021 request to the Census Bureau, which has been assigned reference number DOC-CEN-2021-000970. Furthermore, this new request should not be construed in any way that would result in waiving, tolling, or resetting the FOIA statutory twenty-day (or thirty-day under “unusual circumstances”) requirement under 5 U.S.C. §§ 552(a)(6)(A) and (a)(6)(B) for a determination in response to that previous request.

Fair Lines requests that a copy of the records detailed below be provided to it, and does not wish to inspect the records first. Fair Lines will then make public information about issues of public importance surrounding the United States Census Bureau’s public announcements that it has experienced difficulties and had various issues regarding the gathering and counting of group quarters data for the 2020 Census.¹ Complications with the 2020 Census generally have already caused significant hurdles for many looking forward to elections scheduled in 2021 and 2022. Disclosure of the requested information here will also contribute significantly to the public’s understanding of recent complications with the 2020 Census in light of the COVID-19 pandemic, as well as the impact of group residential facilities generally on the overall populations of various localities and states. Accordingly, it is imperative that the public have access to records casting light in any way on the 2020 Group Quarters Enumeration with its significant implications for our nation’s redistricting and electoral process.

¹ See, e.g., Release Number CB20-RTQ.06, *Census Bureau Statement on Modifying 2020 Census Operations to Make Sure College Students are Counted*, U.S. Census Bureau (Mar. 15, 2020), <https://www.census.gov/newsroom/press-releases/2020/modifying-2020-operations-for-counting-college-students.html>; Press Release, *2020 Census Operational Adjustments Due to COVID-19*, U.S. Census Bureau News, <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html> (accessed on February 19, 2021).

I. Requested Records

Fair Lines requests the following records² in the possession of the U.S. Census Bureau:

1. Records demonstrating or reflecting—for each institutional living facility or housing facility from which a completed 2020 Group Quarters Enumeration questionnaire was received (or any other method of group quarters reporting received such as Drop-Off, Pick Up, Pick Up Paper Response Data File, or Self-Enumeration)—the number of residents reported by each living or housing facility nationwide in response to the Census Bureau’s request for group quarters population data, for each resident living or sleeping at such facility on Census Day, April 1, 2020, and the dates on which such response(s) were received.

Please note that this request encompasses both digital and physical records. “Record” should be understood as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), and applicable case law (*see, e.g., Forsham v. Harris*, 455 U.S. 169, 193 (1980)), existing in any format whatsoever. Please understand “Census Bureau” to include any employees working for the Bureau.

If any portion of the requested records is exempt from disclosure, please state specifically why it is not reasonable to segregate portions of the record for release, and provide an index of the withheld materials as required under *Vaughn v. Rosen*, 484 F.2d 820, 827-28 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).³

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any “reasonably segregable” non-exempt portions of the requested records as required by FOIA. 5 U.S.C. § 552(b). Pursuant to regulation, please clearly delineate any and all redactions in such a manner so that the justification for each redaction is apparent. *See* 15 C.F.R. § 4.7(c)(1)(iii). If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. *Mead Data Cent. v. U.S. Dep’t of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

² These requested records broadly include, but are not limited to, written correspondence, email correspondence, text messages, telephone messages, voice mail messages, records of telephone correspondence, records pertaining to in-person meetings, office memoranda, videotapes, photographs, computer print-outs, calendar or scheduling entries, *etc.*

³ As you are undoubtedly aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987).

II. Guidance Regarding the Search and Processing of Requested Records

In connection with this request for information and records, Fair Lines provides the following guidance regarding the search of requested records and the scope of those records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. Please search all locations likely to contain written communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as Teams, iMessage, Signal, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems, shared messages systems, or other platforms.
- In conducting your search, please understand the terms “record,” “document,” “communication,” and “memorandum,” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind without limitation. We seek records of any kind, including electronic records, audiotapes, videotapes, letters, emails, email addresses, facsimiles, telephone messages, voice mail messages, telephone conversations, calendar entries, scheduling entries, photographs, as well as transcripts, notes, or minutes of any meetings or discussions, and correspondence detailing meetings or discussions in any form whatsoever and without limitation.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. If an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please produce responsive records in the format most felicitous to an expedited production.
- Upon receipt of this request, please take all reasonable steps to preserve relevant public records while the request is pending.

Notice is hereby given that as a non-profit organization requesting these records, Fair Lines qualifies as an “other requester[]” within the meaning of 5 U.S.C. § 552(a)(4)(A)(ii)(III) and 15 C.F.R. § 4.11(c)(1)(iv). Fair Lines states that it will use any records released under this FOIA request to evaluate the operations of the U.S. Census Bureau.

III. Background

An open and transparent government is essential to the functioning of America’s democracy. The American public deserves to know what is occurring in the day-to-day discussions and activities of our government, particularly with implications as significant as the Census Bureau’s recently announced postponement of the redistricting data release date.

Fair Lines is a Section 501(c)(3) non-profit organization committed to educates the public on fair

and legal redistricting through comprehensive data gathering, processing, and deployment; dissemination of relevant news and information; and strategic investments in academic research and litigation. To further this mission, it also files FOIA requests to help promote open and transparent government regarding the federal government's decisions and actions taken regarding apportionment and redistricting.

This request will help Fair Lines monitor the activities of the Census Bureau, and to then inform the public regarding the same. Fair Lines can then develop and make public detailed information about the Bureau's activities and communications.

IV. Application for Fee Waiver or Limitation of Fees

Fair Lines requests that all fees associated with processing this request be either waived or limited, in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations.

Under FOIA, an agency must provide requested records without charge or at a reduced charge if disclosure of the information is in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the Government" and is "not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). These factors weigh in favor of a fee waiver or reduction for this request because the subject of this request clearly concerns identifiable operations and activities of the Federal Government. 15 C.F.R. § 4.11(l)(ii)(2)(i). The disclosures of key information not already "in the public domain" (as sought in this request), *see* 15 C.F.R. § 4.11(l)(ii)(2)(ii), will serve the public interest by significantly contributing to a better public understanding of the Census Bureau's public statements regarding difficulties and issues that have arisen while gathering and counting group quarters data for the 2020 Census.⁴ Disclosure of this requested information is also in the public interest because it will contribute significantly to the public's understanding of the impact of residential facilities on the overall populations of various localities and states. Accordingly, given the public significance of the information and records sought in this request, it is also likely to appeal to a "reasonably broad audience of persons interested in the subject." 15 C.F.R. § 4.11(l)(ii)(2)(iii).

Specifically, the public has a significant interest in understanding the actions of the Census Bureau regarding the release of population data for purposes of apportionment and redistricting. Any improprieties, irregularities, or inadequacy in quality checks of the data threaten to undermine public trust in the fairness of the redistricting process and our democracy. Accordingly, records casting light on this should be made available for immediate public

⁴ *See, e.g.,* Release Number CB20-RTQ.06, *Census Bureau Statement on Modifying 2020 Census Operations to Make Sure College Students are Counted*, U.S. Census Bureau (Mar. 15, 2020), <https://www.census.gov/newsroom/press-releases/2020/modifying-2020-operations-for-counting-college-students.html>; Press Release, *2020 Census Operational Adjustments Due to COVID-19*, U.S. Census Bureau News, <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html> (last visited February 19, 2021); *see also* Jennifer D. Williams, *2020 Census Fieldwork Delayed by COVID-19*, Congressional Research Service (updated Dec. 22, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF11486>.

dissemination for purposes of accountability to the people.

Records with the potential to shed light on these matters would contribute “significantly” to public understanding of operations of the federal government, 15 C.F.R. § 4.11(l)(ii)(2)(iv), including by giving the public a historical record of the actions of Census Bureau officials during this critical time at the Bureau. As publication of these records would benefit the public’s understanding of the Bureau’s actions regarding collection of group quarters data, Fair Lines will make the Bureau’s responses publicly available with accompanying analysis.

Finally, this request is primarily and fundamentally for non-commercial purposes. 15 C.F.R. § 4.11(l)(ii)(3). As a 501(c)(3) nonprofit, Fair Lines does not have a commercial purpose in the disclosure and the release of the information requested is not in its financial interest. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (internal quotation marks omitted)). Fair Lines is committed to providing education in the fields of demography, political science, geographic information systems, and legal studies. Fair Lines supports fair and legal redistricting through comprehensive data gathering, processing, and deployment; dissemination of relevant news and information; and strategic investments in academic research and litigation., all while promoting open and transparent government and public accountability by monitoring the activities of policymakers and officials through FOIA requests. Fair Lines will use information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. Fair Lines also makes materials it gathers available on its public website and promotes their availability on social media platforms.

Accordingly, Fair Lines qualifies for a waiver of fees under FOIA. However, if Fair Lines’ application for a complete fee waiver is denied, Fair Lines hereby requests that the Census Bureau notify Fair Lines of the actual or estimated amount of the fees to be incurred and assessed for the “document search and duplication” of the agency records responsive to this request. 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also* 15 C.F.R. § 4.11(c)(1)(iv).

V. Application for Expedited Processing

Fair Lines requests that the processing of this request be expedited pursuant to 15 C.F.R. § 4.6(f). This request qualifies for expedited processing both because it involves “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence.” 15 C.F.R. § 4.6(f)(iii). Indeed, there are few matters of more widespread interest than the integrity of our election system and democracy; issues regarding the accuracy and collection of group quarters data and its potentially significant impact on the redistricting process are integrally connected to these critical matters.

Additionally, there is an “urgency to inform the public about an actual or alleged Federal Government activity,” and Fair Lines is “primarily engaged in disseminating information.” 15 C.F.R. § 4.6(f)(iv). The information sought here is urgently needed for public dissemination because the public has a pressing interest in learning of any improprieties, irregularities, or inadequacy in quality checks of Census Bureau data, including group quarters data where the

Bureau has already acknowledged numerous difficulties and issues that have arisen while gathering and counting it for the 2020 Census. Members of the public also deserve a voice in shaping the trajectory of the Census Bureau in a positive future direction, strengthening our democracy, and securing public trust in the fairness of the redistricting process. Finally, given the time-sensitive nature of the release of redistricting data in light of upcoming elections, as well as the decennial nature of the Census Bureau's data collection, the public deserves to know how this process is being conducted, as well as to have a voice in shaping these activities.

And as described above, Fair Lines uses the information it gathers and analyzes to educate the public generally through reports, press releases, or other media. Fair Lines also makes materials it gathers publicly available on its website. As such, it frequently engages in publication and dissemination of important information to the broader public regarding various aspects of our government. Accordingly, expedited processing is warranted here.

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief. 15 C.F.R. § 4.6(f)(3).

VI. Conclusion

If you have any questions about this request (including if you do not understand any part of this request), or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to Fair Lines, please contact Jason Torchinsky by phone at (540) 341-8808 or by email at jtorchinsky@hvjt.law to discuss this request. Fair Lines welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, Fair Lines and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

If records are available in electronic format, please email the responsive documents to jtorchinsky@hvjt.law. If not, please send responsive material in native format or in PDF format on a USB drive by mail to:

Jason Torchinsky
Holtzman Vogel Josefiak Torchinsky
15405 John Marshall Hwy
Haymarket, VA 20169

Because of the time-sensitive nature of this request, I ask that you strictly comply with the 20-day time limit established by FOIA and applicable regulations. *See* 5 U.S.C. § 552(a)(6)(A); 15 C.F.R. § 4.6(b). Please be advised that once this 20-day period has expired, you are deemed to have constructively denied this request, and Fair Lines will consider the internal administrative appeals process to be constructively exhausted. *See, e.g., Citizens for Ethics and Responsibility in Gov't v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013). I also respectfully request that documents be made available as soon as they are located and reviewed via a rolling production.

Please confirm receipt of this request and provide me with an estimate of processing time. I look

forward to receiving your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kincaid", with a stylized flourish at the end.

/s/ Adam Kincaid

Adam Kincaid
Executive Director
Fair Lines America Foundation, Inc.
2308 Mount Vernon Ave. Ste. 716
Alexandria VA 22301-1328

Exhibit B



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

March 12, 2021

Mr. Jason Torchinsky
Holtzman Vogel Josefiak Torchinsky
15405 John Marshall Hwy
Haymarket, VA 20169
Jtorchinsky@hvit.law

Dear Mr. Torchinsky:

This letter is in response to correspondence, dated February 22, 2021, from Adam Kincaid, Executive Director, Fair Lines America Foundation, Inc. to the U.S. Census Bureau's Freedom of Information Act (FOIA) Office. Per Mr. Kincaid's request, we are responding to you. We received the FOIA request in this office on February 22, 2021, and have assigned to it tracking number DOC-CEN-2021-000987. We are responding under the FOIA to the request for:

Records demonstrating or reflecting—for each institutional living facility or housing facility from which a completed 2020 Group Quarters Enumeration questionnaire was received (or any other method of group quarters reporting received such as Drop-Off, Pick Up, Pick Up Paper Response Data File, or Self-Enumeration)—the number of residents reported by each living or housing facility nationwide in response to the Census Bureau's request for group quarters population data, for each resident living or sleeping at such facility on Census Day, April 1, 2020, and the dates on which such response(s) were received.

We are withholding responsive documents in whole, under FOIA Exemption 3, Title 5, United States Code, Section 552(b)(3). Please be aware that information responsive to your request, may contain information that is protected by Title 13, United States Code, Section 9, which requires that census records be used solely for statistical purposes and makes these records confidential. Exemption (b)(3) of the FOIA exempts from disclosure, records or portions of records that are made confidential by statute. Accordingly, to that extent that, we must deny your request containing Title 13 protected information.

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

Mr. Torchinsky, DOC-CEN-2021-000987
March 12, 2021
Page 2

**Assistant General Counsel for Litigation, Employment and Oversight
Room 5898-C
U.S. Department of Commerce,
14th and Constitution Avenue, N.W.
Washington, D.C. 20230**

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, by facsimile (fax) to 202-482-2552, or by FOIAonline, if you have an account in FOIAonline, at <https://foiaonline.regulations.gov/foia/action/public/home#>. The appeal should include a copy of the original request and initial denial, if any. All appeals should include a statement of the reasons why the records requested should be made available and why the adverse determination was in error. The appeal letter, the envelope, the e-mail subject line, and the fax cover sheet should be clearly marked "**Freedom of Information Act Appeal.**"

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

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

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

Please contact Chauvez Bennett or Deloris Reed of my staff, by telephone at 301-763-2127 or by email at census.foia@census.gov if you have any questions regarding your request.

Sincerely,

Vernon Curry

Vernon E. Curry, PMP, CIPP/G
Freedom of Information Act/Privacy Act Officer
Chief, Freedom of Information Act Office

Exhibit C

VIA ONLINE PORTAL

March 31, 2021

ATTN: FOIA Office
Vernon E. Curry, PMP, CIPP/G
U.S. Census Bureau, Room 3J235
4600 Silver Hill Road
Washington, DC 20233-3700
Census.efoia@census.gov

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

Fair Lines America Foundation, Inc. (“Fair Lines”) makes the following noncommercial request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, 15 C.F.R. § 4.1 *et seq.*, and any other implementing regulations of your agency.

Please note that this request should be treated as separate from Fair Lines’ February 19, 2021 request to the Census Bureau, which was assigned reference number DOC-CEN-2021-000987, and separate from Fair Lines’ February 18, 2021 request to the Office of the Secretary, which has been assigned reference number DOC-OS-2021-000967. Furthermore, this new request should not be construed in any way that would result in waiving, tolling, or resetting the FOIA statutory twenty-day (or thirty-day under “unusual circumstances”) requirement under 5 U.S.C. §§ 552(a)(6)(A) and (a)(6)(B) for a determination in response to a previous request, or any other deadline.

Fair Lines requests that a copy of the records detailed below be provided to it, and does not wish to inspect the records first. Fair Lines will then make public information of public importance surrounding the United States Census Bureau’s public announcements that it has experienced difficulties and had various issues regarding the gathering and counting of group quarters data for the 2020 Census.¹ Complications with the 2020 Census generally have already caused significant hurdles for many looking forward to elections scheduled in 2021 and 2022. Disclosure of the requested information here will also contribute significantly to the public’s understanding of recent complications with the 2020 Census in light of the COVID-19 pandemic, as well as the impact of group residential facilities generally on the overall populations of various states. Accordingly, it is imperative that the public have access to records casting light in any way on the 2020 Group Quarters Enumeration with its significant implications for our

¹ See, e.g., Release Number CB20-RTQ.06, *Census Bureau Statement on Modifying 2020 Census Operations to Make Sure College Students are Counted*, U.S. Census Bureau (Mar. 15, 2020), <https://www.census.gov/newsroom/press-releases/2020/modifying-2020-operations-for-counting-college-students.html>; Press Release, *2020 Census Operational Adjustments Due to COVID-19*, U.S. Census Bureau News, <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html> (accessed on February 19, 2021).

nation's redistricting and electoral process.

I. Requested Records

Fair Lines requests the following records² in the possession of the U.S. Census Bureau:

1. All summaries, "tabulations[,] and other statistical materials," 13 U.S.C. § 8(b), derived from, summarizing, and/or otherwise relating to the original underlying group quarters population data for Census Day, April 1, 2020, received in response to the Census Bureau's 2020 Group Quarters Enumeration questionnaire regarding institutional living facilities or other housing facilities.³ In requesting these summaries, "tabulations[,] and other statistical materials," we do not seek disclosure of the underlying raw group quarters population data itself as originally "reported by, or on behalf of, any particular respondent" to the Bureau, 13 U.S.C. § 8(b), nor do we seek any "publication whereby the data furnished by any particular establishment or individual under this title can be identified," 13 U.S.C. § 9(a)(2); instead, we seek records *deriving from* or summarizing the originally reported raw data, and/or records with data that has been *reformulated* or *repurposed* by the Bureau in a form such that the underlying data can no longer be identified with a particular establishment or individual.⁴ For instance, any statewide aggregate total group quarters population tabulations of data that exclude, omit, or redact the original group quarters numbers as reported by, or on behalf of, individual institutions (i.e., tabulations where the Bureau excluded the underlying individualized raw data, or where such data can be redacted from the tabulations while producing the aggregate

² These requested records broadly include, but are not limited to, spreadsheets, statistical tabulations, written correspondence, email correspondence, text messages, telephone messages, voice mail messages, records of telephone correspondence, records pertaining to in-person meetings, office memoranda, videotapes, photographs, computer print-outs, calendar or scheduling entries, *etc.*

³ This request should also be understood to include "tabulations and other statistical methods" derived from, summarizing, and/or otherwise relating to 2020 Group Quarters data reported via any other method received by the Bureau, such as Drop-Off, Pick Up, Pick Up Paper Response Data File, or Self-Enumeration.

⁴ *See In re England*, 375 F.3d 1169, 1178 (D.C. Cir. 2004) ("Section 8(b) of the Census Act, 13 U.S.C. § 8(b), provide[s] . . . that 'the Secretary [of Commerce] may furnish copies of tabulations and other statistical materials which do not disclose information reported by, or on behalf of, any particular respondent.'"); 14 Am Jur 2d Census § 9 ("The Secretary of Commerce may also furnish copies of tabulations and other statistical materials which do not disclose the information reported by, or on behalf of, any particular respondent, and may make special statistical compilations and surveys for . . . private persons . . . upon payment of the actual or estimated cost of such work."); *see also Baldrige v. Shapiro*, 455 U.S. 345, 354-55 (1982) (holding that while "the Secretary [of Commerce] may furnish copies of tabulations and other statistical materials which do not disclose the information reported by, or on behalf of, any particular respondent," "raw data *reported by or on behalf of individuals* [is] . . . not available for disclosure" (emphasis added)).

population totals) would be responsive to this request.⁵

Please note that this request encompasses both digital and physical records. “Record” should be understood as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), and applicable case law (*see, e.g., Forsham v. Harris*, 455 U.S. 169, 193 (1980)), existing in any format whatsoever. Please understand “Census Bureau” to include any employees working for the Bureau.

If any portion of the requested records is exempt from disclosure, please state specifically why it is not reasonable to segregate portions of the record for release, and provide an index of the withheld materials as required under *Vaughn v. Rosen*, 484 F.2d 820, 827-28 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).⁶

In the event that some portions of the requested records are properly exempt from disclosure, please disclose any “reasonably segregable” non-exempt portions of the requested records as required by FOIA. 5 U.S.C. § 552(b). Pursuant to regulation, please clearly delineate any and all redactions in such a manner so that the justification for each redaction is apparent. *See* 15 C.F.R. § 4.7(c)(1)(iii). If it is your position that a record contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed through the document. *Mead Data Cent. v. U.S. Dep’t of the Air Force*, 455 F.2d 242, 261 (D.C. Cir. 1977). Claims of non-segregability must be made with the same detail as required

⁵ The U.S. Court of Appeals for the D.C. Circuit has interpreted Section 8(b) of the Census Act to permit the Secretary of Commerce to provide “private persons” with “tabulations and statistical materials of a numerical nature, not names and addresses of specific individuals or firms reporting data to the Census Bureau” in response to their FOIA requests. *Seymour v. Barabba*, 559 F.2d 806, 809 (D.C. Cir. 1977). As the D.C. Circuit explained:

While a list of names and addresses might be considered to be a “tabulation,” yet this would be contrary to the usual understanding. Our understanding of a “tabulation” is a computation to ascertain the total of a column of figures, or perhaps counting the names listed in a certain group, rather than supplying the individual names and addresses. This interpretation is made even clearer by the reference in subsection 8(b) to “tabulations and *other* statistical materials.”

We think the authority of the Secretary here to disclose is an authority to disclose numerical statistical data which does not identify any person, corporation, or entity in any way. Totals, perhaps subtotals and divisions by categories, but nevertheless merely numerical figures are within this meaning. Individual names and addresses are not.

Seymour, 559 F.2d at 809; *see also* 5 U.S.C. § 552(a)(3)(A) (“[E]ach agency, upon any request for records . . . shall make the records promptly available to any person.” (emphasis added)).

⁶ As you are undoubtedly aware, a *Vaughn* index must describe each document claimed as exempt with sufficient specificity “to permit a reasoned judgment as to whether the material is actually exempt under FOIA.” *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979). Moreover, the *Vaughn* index must “describe each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987).

for claims of exemptions in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

II. Guidance Regarding the Search and Processing of Requested Records

In connection with this request for information and records, Fair Lines provides the following guidance regarding the search of requested records and the scope of those records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. Please search all locations likely to contain written communications regarding the same, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as Teams, iMessage, Signal, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems, shared messages systems, or other platforms.
- In conducting your search, please understand the terms “record,” “document,” “summary,” “communication,” and “memorandum,” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind without limitation. We seek records of any kind, including electronic records, spreadsheets, statistical tabulations, audiotapes, videotapes, letters, emails, email addresses, facsimiles, telephone messages, voice mail messages, telephone conversations, calendar entries, scheduling entries, photographs, as well as transcripts, notes, or minutes of any meetings or discussions, and correspondence detailing meetings or discussions in any form whatsoever and without limitation.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. If an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please produce responsive records in the format most felicitous to an expedited production.
- Upon receipt of this request, please take all reasonable steps to preserve relevant public records while the request is pending.

Notice is hereby given that as a non-profit organization requesting these records, Fair Lines qualifies as an “other requester[]” within the meaning of 5 U.S.C. § 552(a)(4)(A)(ii)(III) and 15 C.F.R. § 4.11(c)(1)(iv). Fair Lines states that it will use any records released under this FOIA request to evaluate the operations of the U.S. Census Bureau.

III. Background

An open and transparent government is essential to the functioning of America’s democracy. The American public deserves to know what is occurring in the day-to-day activities of our

government, particularly with implications as significant as the Census Bureau's recently announced postponement of the redistricting data release date.

Fair Lines is a Section 501(c)(3) non-profit organization committed to educate the public on fair and legal redistricting through comprehensive data gathering, processing, and deployment; dissemination of relevant news and information; and strategic investments in academic research and litigation. To further this mission, it also files FOIA requests to help promote open and transparent government regarding the federal government's decisions and actions taken regarding apportionment and redistricting.

This request will help Fair Lines monitor the activities of the Census Bureau, and to then inform the public regarding the same. Fair Lines can then develop and make public detailed information about the Bureau's activities.

IV. Application for Fee Waiver or Limitation of Fees

Fair Lines requests that all fees associated with processing this request be either waived or limited, in accordance with 5 U.S.C. § 552(a)(4)(A)(iii) and your agency's regulations.

Under FOIA, an agency must provide requested records without charge or at a reduced charge if disclosure of the information is in the public interest because it is "likely to contribute significantly to public understanding of the operations or activities of the Government" and is "not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). These factors weigh in favor of a fee waiver or reduction for this request because the subject of this request clearly concerns identifiable operations and activities of the Federal Government. 15 C.F.R. § 4.11(l)(ii)(2)(i). The disclosures of key information not already "in the public domain" (as sought in this request), *see* 15 C.F.R. § 4.11(l)(ii)(2)(ii), will serve the public interest by significantly contributing to a better public understanding of the Census Bureau's public statements regarding difficulties and issues that have arisen while gathering and counting group quarters data for the 2020 Census.⁷ Disclosure of this requested information is also in the public interest because it will contribute significantly to the public's understanding of the impact of residential facilities on the overall populations of various localities and states. Accordingly, given the public significance of the information and records sought in this request, it is also likely to appeal to a "reasonably broad audience of persons interested in the subject." 15 C.F.R. § 4.11(l)(ii)(2)(iii).

Specifically, the public has a significant interest in understanding the actions of the Census Bureau regarding the release of population data for purposes of apportionment and redistricting. Any improprieties, irregularities, or inadequacy in quality checks of the data threaten to

⁷ *See, e.g.*, Release Number CB20-RTQ.06, *Census Bureau Statement on Modifying 2020 Census Operations to Make Sure College Students are Counted*, U.S. Census Bureau (Mar. 15, 2020), <https://www.census.gov/newsroom/press-releases/2020/modifying-2020-operations-for-counting-college-students.html>; Press Release, *2020 Census Operational Adjustments Due to COVID-19*, U.S. Census Bureau News, <https://2020census.gov/en/news-events/operational-adjustments-covid-19.html> (last visited February 19, 2021); *see also* Jennifer D. Williams, *2020 Census Fieldwork Delayed by COVID-19*, Congressional Research Service (updated Dec. 22, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF11486>.

undermine public trust in the fairness of the redistricting process and our democracy. Accordingly, records casting light on this should be made available for immediate public dissemination for purposes of accountability to the people.

Records with the potential to shed light on these matters would contribute “significantly” to public understanding of operations of the federal government, 15 C.F.R. § 4.11(l)(ii)(2)(iv), including by giving the public a historical record of the actions of the Census Bureau during this critical time at the Bureau. As publication of these records would benefit the public’s understanding of the Bureau’s actions regarding collection of group quarters data, Fair Lines will make the Bureau’s responses publicly available with accompanying analysis.

Finally, this request is primarily and fundamentally for non-commercial purposes. 15 C.F.R. § 4.11(l)(ii)(3). As a 501(c)(3) nonprofit, Fair Lines does not have a commercial purpose in the disclosure and the release of the information requested is not in its financial interest. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (internal quotation marks omitted)). Fair Lines is committed to providing education in the fields of demography, political science, geographic information systems, and legal studies. Fair Lines supports fair and legal redistricting through comprehensive data gathering, processing, and deployment; dissemination of relevant news and information; and strategic investments in academic research and litigation., all while promoting open and transparent government and public accountability by monitoring the activities of policymakers and officials through FOIA requests. Fair Lines will use information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. Fair Lines also makes materials it gathers available on its public website and promotes their availability on social media platforms.

Accordingly, Fair Lines qualifies for a waiver of fees under FOIA. However, if Fair Lines’ application for a complete fee waiver is denied, Fair Lines hereby requests that the Census Bureau notify Fair Lines of the actual or estimated amount of the fees to be incurred and assessed for the “document search and duplication” of the agency records responsive to this request. 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also* 15 C.F.R. § 4.11(c)(1)(iv).

V. Application for Expedited Processing

Fair Lines requests that the processing of this request be expedited pursuant to 15 C.F.R. § 4.6(f). This request qualifies for expedited processing both because it involves “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence.” 15 C.F.R. § 4.6(f)(iii). Indeed, there are few matters of more widespread interest than the integrity of our election system and democracy; issues regarding the accuracy and collection of group quarters data and its potentially significant impact on the redistricting process for states are integrally connected to these critical matters.

Additionally, there is an “urgency to inform the public about an actual or alleged Federal Government activity,” and Fair Lines is “primarily engaged in disseminating information.” 15 C.F.R. § 4.6(f)(iv). The information sought here is urgently needed for public dissemination

because the public has a pressing interest in learning of any improprieties, irregularities, or inadequacy in quality checks of Census Bureau data, including group quarters data where the Bureau has already acknowledged numerous difficulties and issues that have arisen while gathering and counting that data for the 2020 Census. Members of the public also deserve a voice in shaping the trajectory of the Census Bureau in a positive future direction, strengthening our democracy, and securing public trust in the fairness of the redistricting process. Finally, given the time-sensitive nature of the release of redistricting data in light of upcoming elections, as well as the decennial nature of the Census Bureau's data collection, the public deserves to know how this process is presently being conducted, as well as to have a voice in shaping these activities.

And as described above, Fair Lines uses the information it gathers and analyzes to educate the public generally through reports, press releases, or other media. Fair Lines also makes materials it gathers publicly available on its website. As such, it frequently engages in publication and dissemination of important information to the broader public regarding various aspects of our government. Accordingly, expedited processing is warranted here.

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief. 15 C.F.R. § 4.6(f)(3).

VI. Conclusion

If you have any questions about this request (including if you do not understand any part of this request), or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to Fair Lines, please contact Jason Torchinsky by phone at (540) 341-8808 or by email at jtorchinsky@hvjt.law to discuss this request. Fair Lines welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, Fair Lines and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

If records are available in electronic format, please email the responsive documents to jtorchinsky@hvjt.law. If not, please send responsive material in native format or in PDF format on a USB drive by mail to:

Jason Torchinsky
Holtzman Vogel Josefiak Torchinsky
15405 John Marshall Hwy
Haymarket, VA 20169

Because of the time-sensitive nature of this request, I ask that you strictly comply with the 20-day time limit established by FOIA and applicable regulations. *See* 5 U.S.C. § 552(a)(6)(A); 15 C.F.R. § 4.6(b). Please be advised that once this 20-day period has expired, you are deemed to have constructively denied this request, and Fair Lines will consider the internal administrative appeals process to be constructively exhausted. *See, e.g., Citizens for Ethics and Responsibility in Gov't v. Fed. Election Comm'n*, 711 F.3d 180 (D.C. Cir. 2013). I also respectfully request

that documents be made available as soon as they are located and reviewed via a rolling production.

Please confirm receipt of this request and provide me with an estimate of processing time. I look forward to receiving your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Kincaid". The signature is fluid and cursive, with a long horizontal stroke at the end.

Adam Kincaid
Executive Director
Fair Lines America Foundation, Inc.
2308 Mount Vernon Ave. Ste. 716
Alexandria VA 22301-1328

Exhibit D

From: Ken Daines
Sent: Wednesday, April 7, 2021 11:32 AM
To: census.foia@census.gov
Subject: FW: 3.31.21 Fair Lines America Foundation FOIA Request - Census Bureau
Attachments: 3.31.21 Fair Lines America Foundation_Census Bureau FOIA Request.pdf

ATTN: Deloris Reed, FOIA Public Liaison

Ms. Reed,

Please confirm receipt of Fair Lines America Foundation's attached FOIA request that was submitted on March 31, 2021, as indicated below.

Again, Jason Torchinsky is the point of contact for this request, and can be reached by email at jtorchinsky@hvjt.law. Feel free to contact us with any questions.

Thank you,

Ken Daines



HOLTZMAN
VOGEL
JOSEFIK
TORCHINSKY PLLC

Office: (540) 341-8808
WWW.HVJT.LAW

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From: Ken Daines
Sent: Wednesday, March 31, 2021 1:43 PM
To: Census.foia@census.gov
Cc: Jason Torchinsky <jtorchinsky@hvjt.law>
Subject: 3.31.21 Fair Lines America Foundation FOIA Request - Census Bureau

ATTN: Vernon E. Curry, PMP, CIPP/G

Mr. Curry,

Attached is Fair Lines America Foundation's FOIA request to the Census Bureau. Please note that this request should be treated as separate from Fair Lines' February 18, 2021 FOIA request to the Office of the Secretary, which has been

assigned reference number DOC-LOS-2021-000967, and also separate from Fair Lines' February 19, 2021 request to the Census Bureau, which was assigned reference number DOC-CEN-2021-000987.

Jason Torchinsky is the point of contact for this request, and can be reached by email at jtorchinsky@hvjt.law. Feel free to contact us with any questions.

Ken Daines



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Exhibit E

From: no-reply@foiaonline.gov <no-reply@foiaonline.gov>
Sent: Wednesday, April 7, 2021 3:14 PM
To: Jason Torchinsky
Subject: FOIA Request DOC-CEN-2021-001311 Submitted

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: DOC-CEN-2021-001311
- Requester Name: Mr. Jason Torchinsky
- Date Submitted: 04/07/2021
- Request Status: Submitted
- Description: All summaries, "tabulations[,] and other statistical materials," 13 U.S.C. § 8(b), derived from, summarizing, and/or otherwise relating to the original underlying group quarters population data for Census Day, April 1, 2020, received in response to the Census Bureau's 2020 Group Quarters Enumeration questionnaire regarding institutional living facilities or other housing facilities. In requesting these summaries, "tabulations[,] and other statistical materials," we do not seek disclosure of the underlying raw group quarters population data itself as originally "reported by, or on behalf of, any particular respondent" to the Bureau, 13 U.S.C. § 8(b), nor do we seek any "publication whereby the data furnished by any particular establishment or individual under this title can be identified," 13 U.S.C. § 9(a)(2); instead, we seek records deriving from or summarizing the originally reported raw data, and/or records with data that has been reformulated or repurposed by the Bureau in a form such that the underlying data can no longer be identified with a particular establishment or individual. For instance, any statewide aggregate total group quarters population tabulations of data that exclude, omit, or redact the original group quarters numbers as reported by, or on behalf of, individual institutions (i.e., tabulations where the Bureau excluded the underlying individualized raw data, or where such data can be redacted from the tabulations while producing the aggregate population totals) would be responsive to this request. Please note that this request encompasses both digital and physical records. "Record" should be understood as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), and applicable case law (see, e.g., *Forsham v. Harris*, 455 U.S. 169, 193 (1980)), existing in any format whatsoever. Please understand "Census Bureau" to include any employees working for the Bureau...

From: no-reply@foiaonline.gov <no-reply@foiaonline.gov>

Date: Wednesday, April 7, 2021 at 4:38 PM

To: Jason Torchinsky <jtorchinsky@hvjt.law>

Subject: FOIA Tracking Number Change for request DOC-OS-2021-001310 (to DOC-CEN-2021-001310)

The FOIA request DOC-OS-2021-001310 has had its Tracking Number changed to DOC-CEN-2021-001310. This is normally due to the request being transferred to another agency (for example, EPA to Dept. of Commerce) or to a sub-agency to process it. Additional details for this request are as follows:

- Old Tracking Number: DOC-OS-2021-001310
- New Tracking Number: DOC-CEN-2021-001310
- Requester Name: Mr. Jason Torchinsky
- Date Submitted: 04/07/2021
- Long Description: Fair Lines requests the following records in the possession of the U.S. Census Bureau: All summaries, "tabulations[,] and other statistical materials," 13 U.S.C. § 8(b), derived from, summarizing, and/or otherwise relating to the original underlying group quarters population data for Census Day, April 1, 2020, received in response to the Census Bureau's 2020 Group Quarters Enumeration questionnaire regarding institutional living facilities or other housing facilities. In requesting these summaries, "tabulations[,] and other statistical materials," we do not seek disclosure of the underlying raw group quarters population data itself as originally "reported by, or on behalf of, any particular respondent" to the Bureau, 13 U.S.C. § 8(b), nor do we seek any "publication whereby the data furnished by any particular establishment or individual under this title can be identified," 13 U.S.C. § 9(a)(2); instead, we seek records deriving from or summarizing the originally reported raw data, and/or records with data that has been reformulated or repurposed by the Bureau in a form such that the underlying data can no longer be identified with a particular establishment or individual. For instance, any statewide aggregate total group quarters population tabulations of data that exclude, omit, or redact the original group quarters numbers as reported by, or on behalf of, individual institutions would be responsive to this request. Please note that this request encompasses both digital and physical records. "Record" should be understood as that term is defined under FOIA (5 U.S.C. § 552(f)(2)), and applicable case law (see, e.g., *Forsham v. Harris*, 455 U.S. 169, 193 (1980)), existing in any format whatsoever. Please understand "Census Bureau" to include any employees for claims of exemptions in a Vaughn index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Exhibit F

From: Census EFOIA (CENSUS/PCO) <census.foia@census.gov>
Sent: Tuesday, April 13, 2021 8:46 AM
To: Ken Daines
Cc: Jason Torchinsky
Subject: Re: 3.31.21 Fair Lines America Foundation FOIA Request - Census Bureau

Mr. Daines,
we received both of your requests (one from DOC) and the one you directly sent to us (DOC-CEN-2021-001311). We are working 001311 and closing 1310 as a duplicate, which is the message you received yesterday. If there is any action DOC needs to take for your request, we will work directly with them.

Please let me know if you have any questions.

Sincerely,

Deloris Reed
FOIA Section Chief

From: Ken Daines <KDaines@hvjt.law>
Sent: Monday, April 12, 2021 7:15 PM
To: Census EFOIA (CENSUS/PCO) <census.foia@census.gov>
Cc: Jason Torchinsky <jtorchinsky@hvjt.law>
Subject: RE: 3.31.21 Fair Lines America Foundation FOIA Request - Census Bureau

ATTN: Deloris Reed, FOIA Public Liaison

Ms. Reed,

Today we received the following message from the Census Bureau's FOIA office:

From: no-reply@foiaonline.gov <no-reply@foiaonline.gov>
Date: Monday, April 12, 2021 at 9:35 AM
To: Jason Torchinsky <jtorchinsky@hvjt.law>
Subject: Final Disposition, Request DOC-CEN-2021-001310
DOC-CEN-2021-001310 has been processed with the following final disposition: Duplicate Request.

In addition to the two questions to you from our April 8, 2021 email (below), please also confirm that Fair Lines America Foundation's March 31, 2021 FOIA request has not been closed or denied, and inform us what the current tracking number is.

Thank you,

Ken Daines



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JOSEFIAK
TORCHINSKY PLLC

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From: Ken Daines
Sent: Thursday, April 8, 2021 2:43 PM
To: census.efoia@census.gov
Cc: Jason Torchinsky <jtorchinsky@hvjt.law>
Subject: RE: 3.31.21 Fair Lines America Foundation FOIA Request - Census Bureau

ATTN: Deloris Reed, FOIA Public Liaison

Ms. Reed,

Yesterday, we received two automated messages from the Census Bureau regarding Fair Lines America Foundation's March 31, 2021 FOIA request. We have two follow-up questions:

1. One automated message said that the request has been assigned Tracking Number DOC-CEN-2021-001311, and the other message said it has been assigned DOC-CEN-2021-001310. Only one request was submitted on March 31, 2021—which of these tracking numbers corresponds with our request?
2. Both automated messages indicated that the "Date Submitted" was 04/07/2021. However, as you can see from the email below, Fair Lines' request was submitted on March 31, 2021. Please confirm the date of receipt of our request.

Please don't hesitate to reach out to us with any questions.

Thank you,

Ken Daines



Office: (540) 341-8808
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Sent: Wednesday, March 31, 2021 1:43 PM
To: Census.efoia@census.gov
Cc: Jason Torchinsky <jtorchinsky@hvjt.law>
Subject: 3.31.21 Fair Lines America Foundation FOIA Request - Census Bureau

ATTN: Vernon E. Curry, PMP, CIPP/G

Mr. Curry,

Attached is Fair Lines America Foundation's FOIA request to the Census Bureau. Please note that this request should be treated as separate from Fair Lines' February 18, 2021 FOIA request to the Office of the Secretary, which has been assigned reference number DOC-IOS-2021-000967, and also separate from Fair Lines' February 19, 2021 request to the Census Bureau, which was assigned reference number DOC-CEN-2021-000987.

Jason Torchinsky is the point of contact for this request, and can be reached by email at jtorchinsky@hvjt.law. Feel free to contact us with any questions.

Ken Daines



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