

1 JEFFREY BOSSERT CLARK
 Acting Assistant Attorney General
 2 ALEXANDER K. HAAS
 Branch Director
 3 DIANE KELLEHER
 BRAD P. ROSENBERG
 4 Assistant Branch Directors
 5 M. ANDREW ZEE
 ALEXANDER V. SVERDLOV
 6 Trial Attorneys
 7 U.S. Department of Justice
 Civil Division - Federal Programs Branch
 8 1100 L Street, NW
 Washington, D.C. 20005
 9 Telephone: (202) 305-0550

10 *Attorneys for Defendants*

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 13 **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA
 14 **SAN JOSE DIVISION**

15
 16 NATIONAL URBAN LEAGUE, *et al.*,

17 Plaintiff,

18 v.

19 WILBUR L. ROSS, JR., *et al.*,

20 Defendants.
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Case No. 5:20-cv-05799-LHK

**DECLARATION OF
 ALBERT E. FONTENOT, JR.**

1 I, Albert E. Fontenot, Jr., make the following Declaration pursuant to 28 U.S.C. § 1746,
2 and state that under penalty of perjury the following is true and correct to the best of my
3 knowledge and belief:

4 **I. Executive Summary**

5 1. I am the Associate Director for Decennial Census Programs at the U.S. Census
6 Bureau. This supplements my prior declaration in this case. In this declaration I:

- 7 • Explain that the Census Bureau is currently required by statute to produce
8 apportionment counts by December 31, 2020;
- 9 • Explain the steps that are necessary to conclude field operations by the December 31,
10 2020 deadline, and identify the ways in which the Temporary Restraining Order
11 (TRO) in this case is interfering with these steps;
- 12 • Explain the steps in post processing that must occur on the completion of field
13 operations and reiterate that if these steps do not begin on October 1, 2020, the Census
14 Bureau may fail to meet its statutory deadline.

15 **II. Statutory Deadline**

16 2. The Census Act 13 U.S.C. Section 141 provides that “the tabulation of total
17 population by States under subsection (a) of this section as required for the apportionment of
18 Representatives in Congress among the several States shall be completed within 9 months after
19 the census date and reported by the Secretary to the President of the United States.” For the 2020
20 Census, this means that the tabulation must be completed and reported to the President by
21 December 31, 2020. While various bills have been introduced in Congress to extend this statutory
22 deadline, as of today the December 31, 2020 deadline remains in effect. The Census Bureau
23 designed the Replan schedule to allow us to meet this statutory deadline.

24 **III. Steps to Conclude Field Operations**

25 3. I explained in my September 5 declaration in this case that nonresponse follow-up,
26 NRFU, is the field operation designed to complete enumeration of nonresponding housing unit
27 addresses and that it involves census field staff (known as enumerators), attempting to contact
28 nonresponding addresses. I will not repeat the background information about NRFU, but will

1 attempt to further assist the court’s understanding of decennial field operations by explaining in
2 more detail the steps necessary to conclude field operations.

3 4. Concluding field operations in Area Census Offices (ACOs) as they complete their
4 workload is a normal part of the NRFU operation, and is not specific to the Replan Schedule. The
5 Census Bureau manages NRFU out of “Census Field Supervisor areas” or “CFS areas” within each
6 of the nation’s 248 ACOs. CFS areas are supervisory work assignment areas consisting of 4,000-
7 5,500 housing units. As of September 21, 2020, roughly 70.7% (9,576) of CFS areas nationwide
8 are eligible for what we call “the closeout phase,” 8,682 are actually in the closeout phase, and
9 roughly 1,578 have actually reached conclusion, meaning that we have zero unresolved addresses
10 in the CFS area.

11 5. The closeout phase refers to the process of focusing our best enumerators to resolve
12 the remaining cases in that area. At the time both the COVID-19 Plan and the Replan were decided
13 upon, CFS areas were eligible for closeout procedures when they crossed the 85% completion
14 mark, or at the passage of a particular date, whichever occurred first. We increased this percentage
15 to 90% independent of the Replan to improve accuracy¹. Under the Replan, all CFS areas would
16 have become eligible for closeout procedures on September 11. This does not mean that all CFS
17 areas would have been moved to closeout procedures on that date, only that regional directors
18 could have made this decision. Under the TRO, we have directed that no CFS area be moved into
19 closeout procedures until it reaches 90% completion. The Census Bureau is continuing to work
20 across the nation to obtain responses from all housing units, and has not begun closeout procedures
21 for any CFS area with under 90% completion.

22 6. On September 5, 2020 this Court enjoined the Census Bureau from “implementing
23 the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened
24 timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any
25 Census field operations.” This TRO is preventing the Census Bureau from taking the steps it needs
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27 ¹ In my September 5 declaration in this case I said the threshold for moving to Closeout Procedures was 85%. I was
28 incorrect. We had initially planned for an 85% threshold, but increased the threshold to 90% on August 17, 2020 as
a way to increase the quality of the data we collected. As discussed above, under the TRO, the Census Bureau has
not begun closeout procedures for any CFS area with under 90% completion.

1 to conclude data collection in an efficient and effective manner in time to meet our statutory
2 deadline, including:

3 Preventing Use of Highest Performing Enumerators. Because of the TRO restriction on
4 releasing staff, we are unable to execute our strategy of assigning the remaining work in CFS
5 Areas eligible for the Closeout Phase to our highest performing enumerators. We define our
6 highest performing enumerators as those who have high case completion rates, are good at
7 converting refusals, know where to look for proxies, have a lot of available hours to work
8 cases, and may have a special skill, like a second language, that assists them to complete
9 cases. This strategy would have ensured that the most difficult NRFU cases were handled
10 by the highest performing enumerators, which would have improved both data quality and
11 efficiency. The data quality improvements come from having enumerators who have a
12 demonstrated ability to work with respondents to get their cooperation completing interviews
13 handling the final NRFU cases (which are often the most difficult cases to complete). We
14 gain efficiency because these enumerators achieve higher rates of completion and resolve
15 cases more quickly.

16 7. The Census Bureau assigns cases using its optimization software. This software is
17 designed to assign cases, via an assigned smart phone, to all enumerators with available hours in
18 a given CFS area, based on a variety of factors – geographic proximity, number of case attempts,
19 best time to contact and other factors. For Closeout, the optimization software – in conjunction
20 with our effort to keep the highest performers - is designed to stabilize the closeout process by
21 assigning high performing enumerators a dedicated set of more permanently cases in a CFS Area.
22 By giving these enumerators more ownership of a set of cases, they can be more strategic in how
23 they attempt to contact them. For instance, if they get a lead on a proxy one day, they will be able
24 follow through on that proxy on a subsequent day.

25 Preventing the Movement of CFS Areas into Closeout Before 90%

26 8. The Census Bureau’s plan has always involved making all CFS areas eligible for
27 Closeout Phase when that CFS area either reaches a percentage completion threshold, or on a date
28 certain, approximately 2 - 3 weeks prior to scheduled conclusion of field operations. The date

1 under the Replan when all CFS areas would have become eligible for Closeout Procedures was
2 September 11. Without the TRO, all CFS areas would be currently eligible for Closeout Phase.

3 9. Closeout procedures are used in every Census to finalize data collection because
4 they provide us with a consistent way to finish the census. Every CFS area is treated the same
5 way, which minimizes variability in how the data is collected. Consistency is an important element
6 of data quality. We would also be able to finish more effectively using Closeout Procedures
7 because this would allow us to accept what we call "POP count only" (population count only,
8 without associated demographic information) is the minimal acceptable data necessary to fulfil the
9 requirements for apportionment. Under the Replan, for households that have not responded to the
10 Census in the final stage of the operation, we were going to utilize arrangements we had made
11 with the Internal Revenue Service (IRS) to allow us to use IRS population count information (a
12 high quality single administrative record source) as the sole source of POP count only information.
13 We still planned to make an attempt to contact these households, and if an enumerator could obtain
14 full information we would take that as a first choice. We have used POP count only enumeration
15 in all censuses since 1990; it is an established technique to convert the final and most difficult
16 cases, to meet the requirements for apportionment and to reduce the number of cases requiring
17 imputation.

18 Ceasing Assignment of Reinterview Cases

19 10. In order to finish field operations by a given deadline, we would normally cease
20 assigning new reinterview cases two weeks prior to conclusion. (The reinterview operation
21 involves reinterviewing selected addresses for quality assurance.) Continuing to assign
22 reinterview cases beyond that point would produce and continual cycle of new cases coming into
23 the field. If we were not under the TRO, we would have ceased assigning reinterview cases, SRQA
24 (Self Response Quality Assurance) cases, and field verification cases by September 16, 2020.
25 Every day that we are forced to send these reinterview cases prevents from deploying these
26 enumerators elsewhere, hindering our ability to complete the Census.

1 11. The Census Bureau Detailed Operations Plan for NRFU states in chapter 2.3.5.3
2 (page 39)² we have 3 types of reinterviews during NRFU –

- 3 • Analytic: Based on statistical calculations, enumerators whose work differs
4 significantly from other enumerators are flagged as outliers. Cases completed by
5 these enumerators are chosen so that an analytic reinterview can be used to further
6 investigate these enumerators to determine if they are following proper
7 enumeration procedures.
- 8 • Random: Random reinterview involves reinterviewing a random sample of the
9 eligible cases completed by every enumerator.
- 10 • Supplemental: Supplemental reinterview allows the National Processing Center
11 (NPC) staff to select additional cases for reinterview for any enumerator at any time
12 during NRFU, if they suspect an enumerator may not be following procedures. This
13 can be done through manual selection, where the user selects a specific case for
14 supplemental RI, or future selection, where the user selects an enumerator and the
15 next two cases checked in for that enumerator are selected for supplemental RI.

16
17 12. The Census Bureau assessed whether we were getting sufficient quality control
18 using analytic and supplemental reinterviews, and as a part of our ongoing process management,
19 and under the Replan, we determined that we would discontinue sending random reinterview cases
20 to the field. In prior censuses, we selected cases for the Reinterview operation primarily through
21 random selection because the paper-based enumeration did not provide us with a method of near
22 real-time assessment of enumerator performance. In the 2020 Census, however, we can obtain
23 information from the handheld devices used by enumerators, such as information about where they
24 were at the time of the interview, the length of the interview, time spent on each question, and
25 other detailed metrics. The elimination of random reinterview was introduced at the same time as
26 the Replan and therefore we are enjoined from making the decision to discontinue this unnecessary

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28 ² This is posted on the Census Bureau's public website at https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/NRFU-detailed-operational-plan_v20.pdf

1 operation. The mandatory continuation of random reinterview simply diverts enumerators who
2 could be used to enumerate hard-to-count addresses.

3 Reversing Reduced Contacts for Vacant Units

4 13. As part of the Replan, the Census Bureau reduced the field work required to verify
5 that a vacant housing unit is, in fact, vacant. We do some follow up with housing units that
6 respondents report as vacant, simply to verify the information. Our original plan required us to
7 make as many as six visits to housing units that had previously been self-reported as vacant. Under
8 the Replan we reduced these six visits to one, and required no visit for self-reported vacant units
9 where we had confirmation of vacancy from administrative records. The TRO's requirement that
10 we visit housing units that respondents reported to be vacant as many as six times, even if we have
11 confirmation of the vacancy from administrative records, also imperils our ability to complete the
12 data collection prior to September 30, 2020. As of September 21, 2020 we are finished with 88.8%
13 of the NRFU field work and 95.8% of the housing units in the nation have been enumerated - and
14 those numbers increase daily. Additionally, 4 states have 99% or more of their housing unit
15 enumeration completed. A total of 49 states, plus Washington D.C. and the Commonwealth of
16 Puerto Rico, have completed 90% or more of the housing units.

17 14. In my September 5 declaration, ECF No. 81-1, I stated that as of that date, and at
18 the completion rate we were then experiencing, we would be able to conclude data collection
19 operations by September 30 and achieve a 99% completion rate for every state. On September 11,
20 2020 I revised my assessment and stated that we were facing significant risks to complete all states
21 by September 30, due to factors beyond the Census Bureau's control, such as wildfires in the
22 western part of our country, major storms, resurgence of COVID-19 restrictions and other similar
23 disruptions. My concerns in this regard continue. In the midst of major West Coast fires and air
24 quality issues that have accelerated since September 11, and the current impacts of Hurricane Sally
25 across the states of Louisiana, Mississippi, Alabama, the Florida panhandle area, parts of Georgia,
26 and South Carolina, I stated publicly on September 17, 2020 in the Census Scientific Advisory
27 Committee meeting that I did not know whether Mother Nature would allow us to meet the
28 September 30 date. Mother Nature, however, is not the only factor; every day that Court

1 injunctions preclude us from following our normal field procedures makes it more difficult for us
2 to complete a timely and complete census.

3 15. The Census is a dynamic operation, conducted across the entire nation, and the
4 situation changes rapidly. We are now dealing with the effects of wildfires, smoke, and multiple
5 hurricanes, including storms still forming that may affect the Gulf Coast area. As of today, we
6 still have 1 state with a completion rate below 90%, thus demonstrating our urgent need to revert
7 to our planned completion strategies to meet the statutory deadline.

8
9 **IV. Steps to Conclude Post-data Collection Processing**

10 16. The next major step, after the completion of data collection operations, is post
11 processing, which refers to the Census Bureau's procedures to summarize the individual and
12 household data into usable, high quality tabulated data products. Our Replan schedule was
13 premised on beginning post processing on October 1 and was designed to allow the Census Bureau
14 to finish NRFU and post processing before the statutory deadline of December 31, 2020.

15 17. Our post processing procedures and systems are meticulously designed, tested and
16 proven to achieve standardized, thoroughly vetted, high quality data products that we can stand
17 behind. The 2020 Census leveraged significant advances in computing technology that have
18 occurred since the 2010 Census. Internet data collection, use of smart-phones for field data
19 collection, digital input of phone data collection, and state-of-the-art paper data capture have
20 enabled the Census Bureau to consolidate and prepare the raw census data for processing more
21 rapidly than ever before. Additionally, our computer applications include built-in quality controls
22 that guide respondents through the data collection process and help to ensure higher data accuracy
23 at the point of data input than ever before.

24 18. The computer processing systems at Census Headquarters have also been optimized
25 in partnership with industry leaders using the latest hardware, database, and processing technology
26 available. Taking advantage of this processing power and speed, we were able to accelerate our
27 processing time to fit within the Replan schedule.

1 19. Nonetheless, post data collection processing is a particularly complex operation,
2 and the steps of the operation must generally be performed consecutively. It is not possible, e.g.,
3 to establish the final collection geograph (establishing the number of housing units for all
4 geographic boundaries in the nation) prior to processing housing units and group quarters that are
5 added or corrected during NRFU. Similarly, it is not possible to unduplicate responses prior to
6 processing all non-ID responses (responses submitted online or via telephone without a census
7 ID). In this sense, the post data collection activities are like building a house – one cannot apply
8 dry wall before erecting the walls, any more than one could lay floor tile before the floor is
9 constructed. There is an order of steps that must be maintained.

10 20. As part of developing the Replan schedule, we looked at the possibility of starting
11 the post data collection processing activities on a flow basis and reaffirmed that there is little
12 opportunity to begin until data collection operations close everywhere. As explained above, it is
13 generally necessary to perform processing steps consecutively, as each step depends upon
14 completion of the prior step. The only processing step we could adjust in the schedule was initial
15 processing of addresses, which we advanced by 26 days. It is not possible, however, to begin final
16 census response processing in one region of the country while another region is still collecting
17 data.

18 21. In my prior declaration I provided information about the various operations
19 comprising post processing and their original and Replan dates. I will not repeat that information
20 here.

21 22. Finally, we wish to be crystal clear that if the Court were to extend the data
22 collection period past September 30, 2020, the Census Bureau’s ability to meet its statutory
23 deadlines to produce apportionment counts prior to December 31, 2020 and redistricting data prior
24 to April 1, 2021 would be seriously jeopardized. The post processing deadlines for the Replan
25 schedule are tight, and extending the data collection deadline would, of necessity, cause the Census
26 Bureau would be at risk of failure of being unable to process the response data in time to meet its
27 statutory obligations. We have already compressed the post processing schedule from 5 months
28 to only 3 months. We previously planned and tested our post processing systems assuming that

1 we would follow a traditional, sequential processing sequence, and the 3-month schedule
2 necessary for the Replan Schedule has already increased risk. We simply cannot shorten post
3 processing beyond the already shortened 3-month period without significant risk.

4 23. The harms discussed in this declaration will be particularly severe in the states that
5 are lagging in total response, primarily those states impacted by storms and weather conditions.
6 Without full latitude to follow our standard completion procedures, these states are more likely to
7 suffer an incomplete enumeration.

8 24. Both field operations and post processing are necessary to conduct the most
9 complete and accurate Census. Spending too much time or effort on one at the expense of the other
10 can result in a less complete or accurate Census. We at the Bureau use our expertise and
11 knowledge to determine the right balance between the two in light of the applicable constraints,
12 including the December 31 statutory deadline to complete the Census and the Secretary's report
13 to the President. Were this Court's actions to compress our timeline still further, the Census Bureau
14 would be at risk of not completing post processing without eliminating critical steps that are needed
15 to insure the accuracy of the enumeration and the apportionment counts. If the court requires us
16 to extend field operations past September 30, it necessarily will come at the expense of post
17 processing, given the statutory deadline of December 31. We currently compressed post
18 enumeration processes to the extent we believe feasible. Any shortening of the allotted time would
19 force us to decide whether to delete operations that are critical and necessary to preparing the
20 apportionment count. Under the current Census Act, neither the Census Bureau nor the Secretary
21 have missed the statutory deadline.

22
23 **V. Conclusion**

24 25. The Census Bureau is doing everything it can to meet the statutory completion
25 deadline and to comply with the Court's TRO. Continued requirement to comply with the
26 restrictions of the TRO means that the Census Bureau will risk missing its statutory deadline to
27 deliver apportionment data.

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26. I have read the foregoing and it is all true and correct.

DATED this ____ day of September, 2020

Albert E. Fontenot, Jr.
Associate Director for Decennial Census Programs
United States Bureau of the Census