

OFFICE OF THE DEPUTY ATTORNEY)
GENERAL,)
U.S. DEPARTMENT OF JUSTICE)
950 Pennsylvania Ave, NW)
Office of the Assistant AG, Main)
Washington, DC 20530;)
)
OFFICE OF LEGAL COUNSEL,)
U.S. DEPARTMENT OF JUSTICE)
950 Pennsylvania Ave, NW)
Office of the Assistant AG, Main)
Washington, DC 20530;)
)
OFFICE OF LEGAL POLICY,)
U.S. DEPARTMENT OF JUSTICE)
950 Pennsylvania Ave, NW)
Office of the Assistant AG, Main)
Washington, DC 20530;)
)
and)
)
OFFICE OF MANAGEMENT AND)
BUDGET)
725 17th Street, NW)
Washington, DC 20503;)
)
Defendants.)
_____)

INTRODUCTION

1. The Brennan Center for Justice at NYU School of Law (the “Brennan Center”) brings this action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel nine federal agencies to produce records responsive to FOIA Requests, pending well beyond statutory deadlines, concerning how the Trump Administration may try to use citizenship-status data to reapportion the U.S. House of Representatives after the conclusion of the 2020 Census, or may otherwise try to alter the Census results for the purposes of reapportionment. Given the time-sensitive relationship between the subject matter of the requested records—the reapportionment calculation—and imminent governmental activity and decisions relating to that same subject

matter, this Complaint seeks an injunction compelling the defendant agencies to complete all processing of the Brennan Center's FOIA Requests, and to produce all non-exempt responsive agency records, within 30 days of the filing of this Complaint.

2. Reapportionment affects the representational rights of every person in the United States. It is a once-a-decade process that determines how many seats each State has in the United States House of Representatives and how states draw electoral districts. Expeditious responses to the Brennan Center's FOIA Requests are imperative to inform the public about how the Administration intends to calculate the reapportionment, including but not limited to excluding non-citizens from the count.

3. Prompt disclosure of the requested records is urgent: The 2020 Census is well underway, and its results will be used to calculate the reapportionment. The Administration has announced that it intends to complete the Census in less than four months' time and report the state-population totals used for calculating the reapportionment by December 31, 2020. The Administration previously announced that, due to the COVID-19 pandemic, it would be delivering the reapportionment data by April 30, 2021. Under either of these timelines, the reapportionment calculation is imminent. If the Brennan Center does not receive information about the Administration's plans for calculating apportionment in short order, it will not be able to inform the public in a timely fashion.

4. Given the impact of the 2020 Census and the resulting reapportionment on the public's fundamental representational rights, the Brennan Center twice requested that each Defendant agency expedite its processing of the Brennan Center's FOIA Requests. While two of those agencies (the Civil Rights Division and Office of Legal Counsel, both of the Department of Justice) have purported to grant the Brennan Center's request for expedited processing, the seven

other Defendants have either denied or ignored the expedited processing requests directed at them. The statutory deadlines for responding to the requests for expedited processing have long passed. And notwithstanding the Civil Rights Division's and Office of Legal Counsel's purported grant of expedition, those agencies have failed to produce any responsive records or even indicate a time-frame within which they will either start or complete their respective responses to the FOIA Requests.

5. Each of the Brennan Center's FOIA Requests has also been pending well beyond the statutory deadlines for a substantive response. None of the Defendants have yet to produce a single document in response to the Requests, nor to offer any indication as to when responsive documents will be produced. The Brennan Center does not know what, if anything, the Defendants intend to produce or withhold or when any production is expected to begin. With the completion of the Census rapidly approaching, it is critical that the public is informed about how and why the Administration intends to exclude non-citizens from apportionment, or whether the administration intends to alter the state-population totals used for calculating the apportionment in any other manner. If the Defendants continue to flout their statutory obligations and put off producing the requested information, the public will be in the dark as to a vital constitutional function.

6. For these reasons, the Brennan Center brings this action, seeking declaratory and injunctive relief, including a preliminary injunction compelling the Defendants to comply with their obligations under the Freedom of Information Act and promptly disclose all non-exempt responsive agency records within 30 days from the filing of this action.

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii) and 28 U.S.C. § 1331.

8. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(6)(E)(iii) to review an agency's failure to respond to an expedited processing request within the statutory time frame or denial of an expedited processing request. Additionally, this Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(6)(C)(i) to review an agency's failure to respond to a FOIA request when the agency has not complied with applicable time limit provisions.

9. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

PARTIES

10. Plaintiff the Brennan Center is a non-partisan law and public policy 501(c)(3) organization. The Brennan Center works to promote democracy and justice by, among other things, regularly writing, publishing, and disseminating information on the Census reapportionment of the U.S. House of Representatives and state-level redistricting following reapportionment of the House. The Brennan Center submitted the FOIA Requests at issue.

11. Defendant the United States Department of Commerce is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Commerce Department is responsible for executing the 2020 Census, and has possession, custody, and control of records to which the Brennan Center seeks access.

12. Defendant the 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 the Brennan Center seeks access.

13. Defendant the Civil Rights Division is a component within, and under the jurisdiction of, the United States Department of Justice, and a federal agency within the meaning

of FOIA, 5 U.S.C. § 552(f)(1). The Civil Rights Division has possession, custody, and control of records to which the Brennan Center seeks access.

14. Defendant the Office of the Attorney General is a component within, and under the jurisdiction of, the United States Department of Justice, and a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Office of the Attorney General has possession, custody, and control of records to which the Brennan Center seeks access.

15. Defendant the Office of the Associate Attorney General is a component within, and under the jurisdiction of, the United States Department of Justice, and a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Office of the Associate Attorney General has possession, custody, and control of records to which the Brennan Center seeks access.

16. Defendant the Office of the Deputy Attorney General is a component within, and under the jurisdiction of, the United States Department of Justice, and a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Office of the Deputy Attorney General has possession, custody, and control of records to which the Brennan Center seeks access.

17. Defendant the Office of Legal Counsel is a component within, and under the jurisdiction of, the United States Department of Justice, and a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Office of Legal Counsel has possession, custody, and control of records to which the Brennan Center seeks access.

18. Defendant the Office of Legal Policy is a component within, and under the jurisdiction of, the United States Department of Justice, and a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The Office of Legal Policy has possession, custody, and control of records to which the Brennan Center seeks access.

19. Defendant the Office of Management and Budget (“OMB”) is a federal agency within the meaning of FOIA, 5 U.S.C. § 552(f)(1). The OMB has possession, custody, and control of records to which the Brennan Center seeks access.

FACTUAL NARRATIVE

The Constitutional and Statutory Framework of the U.S. Census

20. The United States Constitution requires an “actual Enumeration” to be conducted every ten years in “such manner as [Congress] shall by law direct.” U.S. CONST., art. I, § 2, cl. 3.

21. The decennial Census determines not only how many seats each State will have in the United States House of Representatives, but also how “to allocate federal funds to the States and to draw electoral districts.” *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2561 (2019).

22. For this reason, among others, Congress has stated that the Census “is one of the most critical constitutional functions our Federal Government performs.” Pub. L. No. 105-119, § 209(a)(5), 111 Stat. 2440, 2481 (1997).

23. Congress has enacted various statutes related to carrying out the Census, including the Census Act, *see, e.g.*, 13 U.S.C. § 141, *et seq.*, and the House of Representatives Administrative Reform Technical Corrections Act, *see, e.g.*, 2 U.S.C. § 2a.

24. In the Census Act, Congress delegated much of its authority for conducting the Census to the Secretary of Commerce. 13 U.S.C. § 141(a). The Secretary of Commerce then delegated its authority for establishing procedures to conduct the Census to the Census Bureau. 13 U.S.C. §§ 2, 4.

25. The statutory framework for reporting the Census count includes the following steps: (1) the Secretary of Commerce begins the Census by April 1 of the decennial year, 13 U.S.C. § 141(a); (2) the Secretary of Commerce reports the state-population totals for congressional

apportionment to the President by December 31 of that decennial year, 13 U.S.C. § 141(b); (3) the President reports to the Clerk of the House the apportionment population count for each state as ascertained under the decennial census, and the number of House seats to which each state is entitled on the first day of Congress's new session or within one week of that first day, 2 U.S.C. § 2a(a); and (4) the Clerk of the House informs the governor of each state how many House seats their state will receive based on the apportionment numbers within 15 days of receipt of the numbers from the President, 2 U.S.C. § 2a(b).

26. Due to the COVID-19 pandemic, on April 13, 2020, the Census Bureau announced it would seek from Congress a four-month extension for reporting the state-population totals used for reapportionment to the President—a request that, if granted, would extend the deadline to April 30, 2021. *See Statement on 2020 Census Operational Adjustments Due to COVID-19*, Release No. CB20-RTQ.16, *available at* <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=10000001175162>.

27. Over the course of the summer, Administration officials repeatedly asserted that, given the disruptions caused by COVID-19, the Census Bureau could not possibly produce accurate apportionment data by the end of this year. *See, e.g., Nat'l Conf. of Am. Indians, 2020 Census Webinar: American Indian/Alaska Native*, YOUTUBE (May 26, 2020), *available at* <https://www.youtube.com/watch?v=F6IyJMtDDgY&feature=youtu.be&t=4689> (Tim Olson, head of field operations for the 2020 Census, stating on May 26, 2020 that, “[w]e have passed the point where we could even meet the current legislative requirement of December 31st. We can’t do that anymore.”).

28. Despite those assertions, on August 3, 2020 the Census Bureau announced that it now plans to “accelerate the completion of data collection and apportionment counts” and report

apportionment data to the President by December 31, 2020. *See Statement from U.S. Census Bureau Director Steven Dillingham: Delivering a Complete and Accurate 2020 Census Count*, Release No. CB20-RTQ.23, available at <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>. The Census Bureau also announced on the same day that, in order to meet the December 31, 2020 deadline, it will end field data collection by September 30, 2020, a full month earlier than it had planned for collecting data to account for the COVID-19 pandemic.¹

29. These timeline shifts were announced shortly after President Trump issued a memorandum on July 21, 2020, stating that he plans to try to “exclude from the apportionment base aliens who are not in a lawful immigration status.” 85 Fed. Reg. 44,679 (July 23, 2020).

The Trump Administration’s Efforts Related to Citizenship Data and the U.S. Census

30. On numerous occasions over the past two years, the Trump Administration has made efforts to collect citizenship data in connection with the 2020 Census and has indicated an intent to use the data to influence calculations relating to the 2020 Census count, including reapportionment and redistricting.

31. In March 2018, the Trump Administration announced that it would direct the Census Bureau to include an unprecedented citizenship question on the 2020 Census questionnaire. *Dep’t of Commerce*, 139 S. Ct. at 2562. The U.S. Supreme Court in *Department of Commerce v. New York* struck down the Trump Administration’s attempt on June 27, 2019. *Id.*

¹ The Brennan Center is currently counsel in a pending lawsuit filed August 18, 2020, *National Urban League, et al. v. Ross, et al.*, 20-cv-05799-LHK (N.D. Cal.), that could affect when the Census Bureau delivers apportionment data to the President. No matter the outcome of that litigation, the 2020 Census will remain of critical public significance, the reapportionment calculation will occur imminently, and the Brennan Center’s FOIA Requests will remain crucially urgent.

32. Despite the Supreme Court’s ruling, on July 11, 2019, the Trump Administration issued Executive Order 13880 to “ensure that accurate citizenship data is compiled in connection with the census.” 84 Fed. Reg. 33,821 (July 11, 2019). The Executive Order directed all executive departments and agencies to provide the Commerce Department with “the maximum assistance permissible, consistent with law, [to] determin[e] the number of citizens and non-citizens in the country.” *Id.*

33. At President Trump’s press conference announcing Executive Order 13880, which was held on July 11, 2019, United States Attorney General William Barr stated “there is a current dispute over whether illegal aliens can be included for apportionment purposes. Depending on the resolution of that dispute, [the citizenship] data may be relevant to those considerations.” *Remarks by President Trump on Citizenship and the Census*, WHITE HOUSE (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

34. A year later, on July 21, 2020, President Trump issued a “Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census.” 85 Fed. Reg. 44,679 (July 23, 2020). The Memorandum states that the Administration intends to “exclude from the apportionment base aliens who are not in a lawful immigration status.” *Id.* at 44,680.

35. Many media outlets have reported and many legal scholars have opined that the Administration’s plan to exclude “illegal aliens” from the Census count is not only unprecedented, but blatantly unconstitutional. *See, e.g.*, Bruce Ackerman, *Why Trump’s Census Play is Blatantly Unconstitutional*, POLITICO (July 11, 2019), <https://www.politico.com/magazine/story/2019/07/11/trump-census-history-227353>; Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), <https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar->

undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdff1af38_story.html; Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>.

The Brennan Center's FOIA Requests

36. The Brennan Center submitted nearly identical FOIA Requests to each of the Defendants requesting certain categories of agency records related to the collection of citizenship data and the 2020 Census with the intent to “explain to the public how citizenship data may be used to calculate the apportionment.” The Requests also asked for all records pertaining to the process by which Secretary Ross plans to report the state-population totals to President Trump, and the process by which the President will report the state reapportionments to Congress. True and correct copies of these Requests are attached hereto as Exhibits A through I.

37. On July 1, 2020, the Brennan Center submitted a FOIA Request via email to the Commerce Department. *See* Exhibit A.

38. On July 1, 2020, the Brennan Center submitted a FOIA Request via email to the Civil Rights Division. *See* Exhibit C.

39. On July 1, 2020, the Brennan Center submitted a FOIA Request via email to the Office of Legal Counsel. *See* Exhibit G.

40. On July 2, 2020, the Brennan Center mailed a FOIA Request to the Census Bureau, using the mailing address listed on the Census Bureau's official website. *See* Exhibit B. On July 21, 2020, 19 days after the FOIA Request was mailed to the Census Bureau, the Request was returned to the Brennan Center as “undeliverable,” apparently because the Census Bureau was failing to accept mail, including FOIA requests, at the address it directed the public to use for

FOIA requests. The same day that the Brennan Center received the request as “undeliverable,” the Brennan Center re-sent the FOIA Request to the Census Bureau via email. *See* Exhibit B.

41. On July 2, 2020, the Brennan Center mailed a FOIA Request to the Office of the Attorney General. *See* Exhibit D.

42. On July 2, 2020, the Brennan Center mailed a FOIA Request to the Office of the Associate Attorney General. *See* Exhibit E.

43. On July 2, 2020, the Brennan Center mailed a FOIA Request to the Office of the Deputy Attorney General. *See* Exhibit F.

44. On July 2, 2020, the Brennan Center mailed a FOIA Request to the Office of Legal Policy. *See* Exhibit H.

45. On July 10, 2020, the Brennan Center submitted a FOIA Request via email to the OMB. *See* Exhibit I.

46. In particular, each of the FOIA Requests seeks:

All records created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

- calculating or otherwise formulating the 2020 total national population;
- calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
- reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
- reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
- changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File;

- changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.

All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).

All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).

See Exhibits A-I.

47. In addition, each of the FOIA Requests seeks the disclosure of records of communications related to the 2020 Census between, on the one hand, persons or entities in the Trump Administration and, on the other hand, certain identified individuals, think tanks, policy organizations, and political groups. *See Exhibits A-I.*

48. Each of the FOIA Requests explicitly requests that its processing be expedited pursuant to 5 U.S.C. § 552(a)(6)(E) and the recipient Defendant’s applicable regulations, *see* 15 C.F.R. §§ 4.6(f)(iii), (iv) (Commerce Department and Census Bureau); 28 C.F.R. §§ 16.5(e)(1)(ii), (iv) (Department of Justice components); 5 C.F.R. §§ 1303.40(e)(1)(ii), (iv) (OMB). Each of the FOIA Requests explains that the agency records being sought are (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence” and (2) that the Brennan Center is “primarily engaged in disseminating information” and there is “[a]n urgency to inform the public about an actual or alleged Federal Government activity.” *See Exhibits A-I.*

49. Each of the FOIA Requests also seeks a waiver of all fees associated with document searches, reviews, and duplications conducted in response to the FOIA Request, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and the Defendants’ relevant regulations, *see* 15 C.F.R. § 4.11(l)

(Commerce Department and Census Bureau); 28 C.F.R. § 16.10(k) (Department of Justice components); 5 C.F.R. § 1303.94 (OMB). *See* Exhibits A-I.

The Brennan Center's Renewed Request for Expedition

50. On August 13, 2020, the Brennan Center emailed letters to each Defendant renewing and supplementing its requests for expedited processing of the FOIA Requests ("Supplemental Expedited Processing Letters"). True and correct copies of these letters are attached hereto as Exhibits J through R.

51. Each of the Supplemental Expedited Processing Letters reiterates and emphasizes that, pursuant to the applicable statutory and regulatory requirements, the Brennan Center is entitled to expedited processing because (1) the records sought by the FOIA Requests are a matter of widespread and exceptional media interest raising questions about the government's integrity which affect public confidence and (2) the Brennan Center is primarily engaged in disseminating information, and there is an urgency to inform the public about the issues surrounding the 2020 Census. *See* Exhibits J-R.

52. The Supplemental Expedited Processing Letters overwhelmingly establish the urgency for expedited processing. These letters demonstrate an enormous upsurge of media interest in the 2020 Census and apportionment process generally, and in particular with respect to public concern and controversy relating to the Trump Administration's announcement of its intent to exclude undocumented people from the count and the Administration's unexpected decision to complete the Census count and report the apportionment data to the President by December 31, 2020. *See* Exhibits J-R.

The Urgent Need for Expedited Responses to the FOIA Requests

53. The Brennan Center has established an entitlement to, and need for, expedited responses to the FOIA Requests because the requested agency records are a matter of widespread and exceptional media interest raising questions about the government's integrity and, further, because the Brennan Center is primarily engaged in disseminating information.

54. The widespread and exceptional media interest regarding how citizenship data relates to the 2020 Census count and reapportionment is evidenced by the abundance of articles published by a variety of leading media outlets, including but not limited to, Fox News, NPR, Politico, The New York Times, The Washington Post, and a variety of local media outlets such as the Arkansas Democrat Gazette, The Daily Mountain Eagle, KLTV, and WWLP-22 News. *See* Exhibits A-R. The articles point to issues of government integrity, including but not limited to, (1) whether the plans revealed by the President's July 21, 2020 Memorandum are unconstitutional or otherwise violate federal law; (2) whether the citizenship data the Government plans to use to calculate the state population totals used for reapportionment will be accurate; and (3) whether the Census count is being improperly politically influenced and/or is lacking transparency.

55. Access to the requested agency records is essential for the public to assess the integrity of the Administration's plans for producing the state population totals used for reapportionment, including its plans for including or using citizenship data in connection with creation of those totals.

56. The Brennan Center is a "cutting-edge communications hub, shaping opinion by taking [its] message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed August 13, 2020). It works first to inform the public of injustice in society and then uses its expertise to advance its policies.

The Brennan Center's legal and advocacy work has the purpose of creating a public record of important issues.

57. The Brennan Center intends to use the agency records it has requested to inform the public about how the Trump Administration plans to calculate state population totals, including how citizenship data may be used to calculate reapportionment.

58. Expedited responses to the FOIA requests are warranted and necessary in part due to the imminence of reapportionment. The agency records are urgently needed to inform the public about how the government's plans may affect their rights.

59. For all these reasons, expedited processing of the Brennan Center's request is necessary.

**Commerce Department's Failure to Properly Respond
to the FOIA Request, Including the Request for Expedited Processing**

60. Under 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 15 C.F.R. § 4.6(f)(4), the Commerce Department had 10 calendar days to respond to the Brennan Center's requests for expedited processing in both its initial FOIA Request and Supplemental Expedited Processing Letter.

61. Under 5 U.S.C. § 552(a)(6)(A)(i) and 15 C.F.R. § 4.6(b), the Commerce Department had 20 working days to inform the Brennan Center of its determination whether to comply with the Brennan Center's FOIA Request, by gathering and reviewing the requested records, determining and communicating the scope of the records it intends to produce and withhold, and informing the Brennan Center it can appeal whatever portion of the determination is adverse. *See Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 188–89 (D.D.C. 2013).

62. The Brennan Center sent its FOIA Request via email to the Commerce Department on July 1, 2020. *See* Exhibits A, AA. On information and belief, the Commerce Department

received the email transmission of the FOIA Request virtually immediately, on July 1, 2020. The statutory clock for the Commerce Department to respond started to run on July 1, 2020, the date the request was received in the agency's email inbox. *See Competitive Enter. Inst. v. U.S. Envtl. Prot. Agency*, 232 F. Supp. 3d 172, 182 (D.D.C. 2017).

63. More than 10 calendar days have passed since the Brennan Center's FOIA Request was sent via email and received by the Commerce Department on July 1, 2020. *See Exhibits A, AA.* Because July 11, 2020 was a Saturday, the statutory ten-calendar-day period expired on July 13, 2020.

64. More than 20 working days have passed since the Brennan Center's FOIA Request was sent via email and received by the Commerce Department on July 1, 2020. *See Exhibits A, AA.* Twenty working days from July 1, 2020 was July 30, 2020.²

65. More than 10 calendar days have passed since the Brennan Center's renewed request for expedited processing in its Supplemental Expedited Processing Letter was sent via email and received by the Commerce Department on August 13, 2020. *See Exhibits A, AA.* Because August 23, 2020 was a Sunday, the statutory ten-calendar-day period expired on August 24, 2020.

66. On August 18, 2020, the Brennan Center transmitted an email to the Commerce Department to follow-up on the status of the agency's handling of the FOIA Request and the Supplemental Expedited Processing Letter. A true and correct copy of this follow-up email is attached hereto in Exhibit AA. As of the time of the filing of this Complaint, the Commerce Department has neither acknowledged nor responded to this follow-up email. *See Exhibit AA.*

² This date takes into account July 3, 2020 as a federal holiday. *See* 5 U.S.C. § 6103(a)-(b).

67. As of the filing of this Complaint, the Commerce Department has not communicated *at all* with the Brennan Center regarding its FOIA Request. The Commerce Department has not responded to the Brennan Center's request for expedited processing. The Commerce Department has not informed the Brennan Center of any determination whether to comply with the request nor produced any records in response to the request. The Commerce Department has not responded to the Brennan Center's fee waiver request made pursuant to 15 C.F.R. § 4.11(l).

**Census Bureau's Failure to Properly Respond
to the FOIA Request, Including the Request for Expedited Processing**

68. Under 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 15 C.F.R. § 4.6(f)(4), the Census Bureau had 10 calendar days to respond to the Brennan Center's requests for expedited processing in both its initial FOIA Request and Supplemental Expedited Processing Letter.

69. Under 5 U.S.C. § 552(a)(6)(A)(i) and 15 C.F.R. § 4.6(b), the Census Bureau had 20 working days to inform the Brennan Center of its determination whether to comply with the Brennan Center's FOIA Request, by gathering and reviewing the requested records, determining and communicating the scope of the records it intends to produce and withhold, and informing the Brennan Center it can appeal whatever portion of the determination is adverse. *See Citizens for Responsibility & Ethics in Wash.*, 711 F.3d at 188–89.

70. The Brennan Center sent its FOIA Request to the Census Bureau on July 2, 2020 by mail. After the mailed FOIA Request was returned as undeliverable, the Brennan Center sent its FOIA Request via email to the Census Bureau on July 21, 2020. *See Exhibit B.* On information and belief, the Census Bureau received the email transmission of the FOIA Request virtually immediately, on July 21, 2020.

71. The statutory clock for the Census Bureau to respond started to run, at the latest, on July 21, 2020, the date the emailed version of the request was received in the agency's email inbox. *See Competitive Enter. Inst.*, 232 F. Supp. 3d at 182.

72. The Census Bureau failed to respond to the Brennan Center's request for expedited processing of the FOIA Request within 10 calendar days from the Census Bureau's receipt of the emailed version of the FOIA Request. Ten calendar days from July 21, 2020 was July 31, 2020.

73. On or about August 3, 2020, the Census Bureau emailed a letter to the Brennan Center denying the Brennan Center's initial request for expedited processing of the FOIA Request. A true and correct copy of this letter is attached hereto as Exhibit BB. In its August 3, 2020 letter, the Census Bureau also denied the Brennan Center's fee waiver request made pursuant to 15 C.F.R. § 4.11(l), but did not provide any estimated fee. *See* Exhibit BB.

74. More than 20 working days have passed since the Brennan Center's FOIA Request was re-sent via email and received by the Census Bureau on July 21, 2020. *See* Exhibit B. Twenty working days from July 21, 2020 was August 18, 2020.

75. More than 10 calendar days have passed since the Brennan Center's renewed request for expedited processing in its Supplemental Expedited Processing Letter was sent via email and received by the Census Bureau on August 13, 2020. *See* Exhibit K. Because August 23, 2020 was a Sunday, the statutory ten-calendar-day period expired on August 24, 2020.

76. On or about September 11, 2020, more than 35 working days from when the Census Bureau received the Brennan Center's FOIA Request, the Census Bureau emailed a letter to the Brennan Center purporting to seek clarification of the FOIA Request and asserting that the request "does not clearly describe the records sought, and therefore, does not constitute a proper request under FOIA." *See* Exhibit II. A true and correct copy of this letter is attached hereto as Exhibit

II. Contrary to that assertion, the Brennan Center's FOIA Request is a proper request, including because it had, among other things, date ranges, names of individuals and entities, and reasonable descriptions of the agency records sought. *See* Exhibit B; 15 C.F.R. § 4.4(c). As of this filing, the only Defendant that has suggested to the Brennan Center that there is any issue or concern regarding the sufficiency, clarity, or reasonableness of the Brennan Center's FOIA Requests is the Census Bureau.

77. As of the filing of this Complaint, the Census Bureau has not communicated with the Brennan Center regarding the renewed request for expedited processing in its Supplemental Expedited Processing Letter. Further, the Census Bureau has not produced any records in response to the request.

**Civil Rights Division's Failure to Properly Respond
to the FOIA Request, Including the Request for Expedited Processing**

78. Under 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4), the Civil Rights Division had 10 calendar days to respond to the Brennan Center's requests for expedited processing in both its initial FOIA Request and Supplemental Expedited Processing Letter.

79. Under 5 U.S.C. §§ 552(a)(6)(A)(i) & (B)(i) and 28 C.F.R. § 16.5(c), the Civil Rights Division had 20 working days plus an additional 10 working days due to citing unusual circumstances, for a total of 30 working days, to inform the Brennan Center of its determination whether to comply with the Brennan Center's FOIA Request, by gathering and reviewing the requested records, determining and communicating the scope of the records it intends to produce and withhold, and informing the Brennan Center it can appeal whatever portion of the determination is adverse. *See Citizens for Responsibility & Ethics in Wash.*, 711 F.3d at 188–89.

80. The Brennan Center sent its FOIA Request via email to the Civil Rights Division on July 1, 2020. *See* Exhibit C. On information and belief, the Civil Rights Division received the

email transmission of the FOIA Request virtually immediately, on July 1, 2020. The statutory clock for the Civil Rights Division to respond started to run on July 1, 2020, the date the request was received in the agency's email inbox. *See Competitive Enter. Inst.*, 232 F. Supp. 3d at 182.

81. On July 13, 2020, the Civil Rights Division emailed a letter to the Brennan Center acknowledging receipt of its FOIA Request on July 1, 2020 and citing unusual circumstances pursuant to 5 U.S.C. § 552 (a)(6)(B)(i)-(iii). A true and correct copy of this letter is attached hereto as Exhibit CC.

82. The Civil Rights Division failed to respond to the Brennan Center's request for expedited processing of the FOIA Request within 10 calendar days from the Civil Rights Division's receipt of the emailed FOIA Request on July 1, 2020. *See Exhibits C, CC.* Because July 11, 2020 was a Saturday, the statutory ten-calendar-day period expired on July 13, 2020.

83. On or about August 14, 2020, the Civil Rights Division emailed a letter to the Brennan Center granting the Brennan Center's request for expedited processing. A true and correct copy of this letter is attached hereto as Exhibit HH. The Civil Rights Division granted the request after having received the Supplemental Expedited Processing Letter, which the Brennan Center emailed on August 13, 2020. *See Exhibits L, HH.*

84. More than 30 working days have passed since the Brennan Center's FOIA Request was sent via email and received by the Civil Rights Division on July 1, 2020. *See Exhibit C.* Thirty working days from July 1, 2020 was August 13, 2020.³

85. As of the filing of this Complaint, the Civil Rights Division has neither informed the Brennan Center of any determination as to whether it will comply with the Brennan Center's FOIA Request, nor produced any records in response to the request. The Civil Rights Division

³ This date takes into account July 3, 2020 as a federal holiday. *See* 5 U.S.C. § 6103(a)-(b).

has not responded to the Brennan Center's fee waiver request made pursuant to 28 C.F.R. § 16.10(k).

**Office of the Attorney General's Failure to Properly
Respond to the FOIA Request, Including the Request for Expedited Processing**

86. Under 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4), the Office of the Attorney General had 10 calendar days to respond to the Brennan Center's requests for expedited processing in both its initial FOIA Request and Supplemental Expedited Processing Letter.

87. Under 5 U.S.C. §§ 552(a)(6)(A)(i) & (B)(i) and 28 C.F.R. § 16.5(c), the Office of the Attorney General had 20 working days plus an additional 10 working days due to citing unusual circumstances, for a total of 30 working days, to inform the Brennan Center of its determination whether to comply with the Brennan Center's FOIA Request, by gathering and reviewing the requested records, determining and communicating the scope of the records it intends to produce and withhold, and informing the Brennan Center it can appeal whatever portion of the determination is adverse. *See Citizens for Responsibility & Ethics in Wash.*, 711 F.3d at 188–89.

88. The Brennan Center's FOIA Request was sent to the Office of the Attorney General on July 2, 2020 by mail. *See Exhibit D.*

89. On July 23, 2020, the Office of the Attorney General, acting through the Office of Information Policy, emailed a letter to the Brennan Center acknowledging receipt of the FOIA Request on July 13, 2020. A true and correct copy of this letter is attached hereto as Exhibit DD.

90. In its July 23, 2020 letter, the Office of the Attorney General cited unusual circumstances pursuant to 5 U.S.C. § 552 (a)(6)(B)(i)-(iii), and denied the Brennan Center's request for expedited processing. *See Exhibit DD.*

91. More than 30 working days have passed since the Brennan Center's FOIA Request was received by the Office of the Attorney General on July 13, 2020. *See* Exhibits D, DD. Thirty working days from July 13, 2020 was August 24, 2020.

92. More than 10 calendar days have passed since the Brennan Center's renewed request for expedited processing in its Supplemental Expedited Processing Letter was sent via email and received by the Office of Attorney General on August 13, 2020. *See* Exhibit M. Because August 23, 2020 was a Sunday, the statutory ten-calendar-day period expired on August 24, 2020.

93. As of the filing of this Complaint, the Office of the Attorney General has not communicated with the Brennan Center regarding its Supplemental Expedited Processing Letter. The Office of the Attorney General has neither informed the Brennan Center of any determination as to whether it will comply with the Brennan Center's FOIA Request, nor produced any records in response to the request. The Office of the Attorney General has not responded to the Brennan Center's fee waiver request made pursuant to 28 C.F.R. § 16.10(k).

**Office of the Associate Attorney General's Failure to Properly
Respond to the FOIA Request, Including the Request for Expedited Processing**

94. Under 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4), the Office of the Associate Attorney General had 10 calendar days to respond to the Brennan Center's requests for expedited processing in both its initial FOIA Request and Supplemental Expedited Processing Letter.

95. Under 5 U.S.C. §§ 552(a)(6)(A)(i) & (B)(i) and 28 C.F.R. § 16.5(c), the Office of the Associate Attorney General had 20 working days plus an additional 10 working days due to citing unusual circumstances, for a total of 30 working days, to inform the Brennan Center of its determination whether to comply with the Brennan Center's FOIA Request, by gathering and reviewing the requested records, determining and communicating the scope of the records it

intends to produce and withhold, and informing the Brennan Center it can appeal whatever portion of the determination is adverse. *See Citizens for Responsibility & Ethics in Wash.*, 711 F.3d at 188–89.

96. The Brennan Center’s FOIA Request was sent to the Office of the Associate Attorney General on July 2, 2020 by mail. *See Exhibit E.*

97. On July 23, 2020, the Office of the Associate Attorney General, acting through the Office of Information Policy, emailed a letter to the Brennan Center acknowledging receipt of the FOIA Request on July 13, 2020. *See Exhibit DD.*

98. In its July 23, 2020 letter, the Office of the Associate Attorney General cited unusual circumstances pursuant to 5 U.S.C. § 552 (a)(6)(B)(i)-(iii), and denied the Brennan Center’s request for expedited processing. *See Exhibit DD.*

99. More than 30 working days have passed since the Brennan Center’s FOIA Request was received by the Office of the Associate Attorney General on July 13, 2020. *See Exhibits E, DD.* Thirty working days from July 13, 2020 was August 24, 2020.

100. More than 10 calendar days have passed since the Brennan Center’s renewed request for expedited processing in its Supplemental Expedited Processing Letter was sent via email and received by the Office of Associate Attorney General on August 13, 2020. *See Exhibit N.* Because August 23, 2020 was a Sunday, the statutory ten-calendar-day period expired on August 24, 2020.

101. As of the filing of this Complaint, the Office of the Associate Attorney General has not communicated with the Brennan Center regarding its Supplemental Expedited Processing Letter. The Office of the Associate Attorney General has neither informed the Brennan Center of any determination as to whether it will comply with the Brennan Center’s FOIA Request, nor

produced any records in response to the request. The Office of the Associate Attorney General has not responded to the Brennan Center's fee waiver request made pursuant to 28 C.F.R. § 16.10(k).

**Office of the Deputy Attorney General's Failure to Properly
Respond to the FOIA Request, Including the Request for Expedited Processing**

102. Under 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4), the Office of the Deputy Attorney General had 10 calendar days to respond to the Brennan Center's requests for expedited processing in both its initial FOIA Request and Supplemental Expedited Processing Letter.

103. Under 5 U.S.C. §§ 552(a)(6)(A)(i) & (B)(i) and 28 C.F.R. § 16.5(c), the Office of the Deputy Attorney General had 20 working days plus an additional 10 working days due to citing unusual circumstances, for a total of 30 working days, to inform the Brennan Center of its determination whether to comply with the Brennan Center's FOIA Request, by gathering and reviewing the requested records, determining and communicating the scope of the records it intends to produce and withhold, and informing the Brennan Center it can appeal whatever portion of the determination is adverse. *See Citizens for Responsibility & Ethics in Wash.*, 711 F.3d at 188–89.

104. The Brennan Center's FOIA Request was sent to the Office of the Deputy Attorney General on July 2, 2020 by mail. *See Exhibit F.*

105. On July 23, 2020, the Office of the Deputy Attorney General, acting through the Office of Information Policy, emailed a letter to the Brennan Center acknowledging receipt of the FOIA Request on July 13, 2020. *See Exhibit DD.*

106. In its July 23, 2020 letter, the Office of the Deputy Attorney General cited unusual circumstances pursuant to 5 U.S.C. § 552 (a)(6)(B)(i)-(iii), and denied the Brennan Center's request for expedited processing. *See* Exhibit DD.

107. More than 30 working days have passed since the Brennan Center's FOIA Request was received by the Office of the Deputy Attorney General on July 13, 2020. *See* Exhibits F, DD. Thirty working days from July 13, 2020 was August 24, 2020.

108. More than 10 calendar days have passed since the Brennan Center's renewed request for expedited processing in its Supplemental Expedited Processing Letter was sent via email and received by the Office of Deputy Attorney General on August 13, 2020. *See* Exhibit O. Because August 23, 2020 was a Sunday, the statutory ten-calendar-day period expired on August 24, 2020.

109. As of the filing of this Complaint, the Office of the Deputy Attorney General has not communicated with the Brennan Center regarding its Supplemental Expedited Processing Letter. The Office of the Deputy Attorney General has neither informed the Brennan Center of any determination as to whether it will comply with the Brennan Center's FOIA Request, nor produced any records in response to the request. The Office of the Deputy Attorney General has not responded to the Brennan Center's fee waiver request made pursuant to 28 C.F.R. § 16.10(k).

**Office of Legal Counsel's Failure to Properly Respond
to the FOIA Request, Including the Request for Expedited Processing**

110. Under 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4), the Office of Legal Counsel had 10 calendar days to respond to the Brennan Center's requests for expedited processing in both its initial FOIA Request and Supplemental Expedited Processing Letter.

111. Under 5 U.S.C. § 552(a)(6)(A)(i) and 28 C.F.R. § 16.5(c), the Office of Legal Counsel had 20 working days to inform the Brennan Center of its determination whether to comply

with the Brennan Center's FOIA Request, by gathering and reviewing the requested records, determining and communicating the scope of the records it intends to produce and withhold, and informing the Brennan Center it can appeal whatever portion of the determination is adverse. *See Citizens for Responsibility & Ethics in Wash.*, 711 F.3d at 188–89.

112. The Brennan Center sent its FOIA Request via email to the Office of Legal Counsel on July 1, 2020. *See* Exhibit G. On information and belief, the Office of Legal Counsel received the email transmission of the FOIA Request virtually immediately, on July 1, 2020. The statutory clock for the Office of Legal Counsel to respond started to run on July 1, 2020, the date the FOIA request was received in the agency's email inbox. *See Competitive Enter. Inst.*, 232 F. Supp. 3d at 182.

113. On July 10, 2020, the Office of Legal Counsel emailed a letter to the Brennan Center acknowledging receipt of the request. A true and correct copy of the letter is attached hereto as Exhibit EE.

114. In its July 10, 2020 letter, the Office of Legal Counsel denied the Brennan Center's request for expedited processing. *See* Exhibit EE.

115. More than 20 working days have passed since the Brennan Center's FOIA Request was sent via email and received by the Office of Legal Counsel on July 1, 2020. *See* Exhibits G, EE. Twenty working days from July 1, 2020 was July 30, 2020.⁴

116. On or about September 4, 2020, the Office of Legal Counsel emailed a letter to the Brennan Center reversing its denial and granting the Brennan Center's request for expedited processing. A true and correct copy of this letter is attached hereto as Exhibit FF. The Office of

⁴ This date takes into account July 3, 2020 as a federal holiday. *See* 5 U.S.C. § 6103(a)-(b).

Legal Counsel granted the request 21 days after having received the Supplemental Expedited Processing Letter, which the Brennan Center emailed on August 13, 2020. *See* Exhibits P, FF.

117. As of the filing of this Complaint, the Office of Legal Counsel has neither informed the Brennan Center of any determination as to whether it will comply with the Brennan Center's FOIA Request, nor produced any records in response to the request. The Office of Legal Counsel has not responded to the Brennan Center's fee waiver request made pursuant to 28 C.F.R. § 16.10(k).

**Office of Legal Policy's Failure to Properly
Respond to the FOIA Request, Including the Request for Expedited Processing**

118. Under 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4), the Office of Legal Policy had 10 calendar days to respond to the Brennan Center's requests for expedited processing in both its initial FOIA Request and Supplemental Expedited Processing Letter.

119. Under 5 U.S.C. §§ 552(a)(6)(A)(i) & (B)(i) and 28 C.F.R. § 16.5(c), the Office of Legal Policy had 20 working days plus an additional 10 working days due to citing unusual circumstances, for a total of 30 working days, to inform the Brennan Center of its determination whether to comply with the Brennan Center's FOIA Request, by gathering and reviewing the requested records, determining and communicating the scope of the records it intends to produce and withhold, and informing the Brennan Center it can appeal whatever portion of the determination is adverse. *See Citizens for Responsibility & Ethics in Wash.*, 711 F.3d at 188–89.

120. The Brennan Center's FOIA Request was sent to the Office of Legal Policy on July 2, 2020 by mail. *See* Exhibit H.

121. On July 23, 2020, the Office of Legal Policy, acting through the Office of Information Policy, emailed a letter to the Brennan Center acknowledging receipt of the FOIA Request on July 13, 2020. *See* Exhibit DD.

122. In its July 23, 2020 letter, the Office of Legal Policy cited unusual circumstances pursuant to 5 U.S.C. § 552 (a)(6)(B)(i)-(iii), and denied the Brennan Center's request for expedited processing. *See* Exhibit DD.

123. More than 30 working days have passed since the Brennan Center's FOIA Request was received by the Office of Legal Policy on July 13, 2020. *See* Exhibits H, DD. Thirty working days from July 13, 2020 was August 24, 2020.

124. More than 10 calendar days have passed since the Brennan Center's renewed request for expedited processing in its Supplemental Expedited Processing Letter was sent via email and received by the Office of Legal Policy on August 13, 2020. *See* Exhibit Q. Because August 23, 2020 was a Sunday, the statutory ten-calendar-day period expired on August 24, 2020.

125. As of the filing of this Complaint, the Office of Legal Policy has not communicated with the Brennan Center regarding its Supplemental Expedited Processing Letter. The Office of Legal Policy has neither informed the Brennan Center of any determination as to whether it will comply with the Brennan Center's FOIA Request, nor produced any records in response to the request. The Office of Legal Policy has not responded to the Brennan Center's fee waiver request made pursuant to 28 C.F.R. § 16.10(k).

**OMB's Failure to Properly Respond to the
FOIA Request, Including the Request for Expedited Processing**

126. Under 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 5 C.F.R. § 1303.40(e)(4), the OMB had 10 calendar days to respond to the Brennan Center's requests for expedited processing in both its initial FOIA Request and Supplemental Expedited Processing Letter.

127. Under 5 U.S.C. § 552(a)(6)(A)(i) and 5 C.F.R. § 1303.40(a), the OMB had 20 working days to inform the Brennan Center of its determination whether to comply with the Brennan Center's FOIA Request, by gathering and reviewing the requested records, determining

and communicating the scope of the records it intends to produce and withhold, and informing the Brennan Center it can appeal whatever portion of the determination is adverse. *See Citizens for Responsibility & Ethics in Wash.*, 711 F.3d at 188–89.

128. The Brennan Center sent its FOIA Request via email to the OMB on July 10, 2020. *See Exhibits I, GG.* A true and correct copy of the email transmission is attached hereto as Exhibit GG. On information and belief, the OMB received the email transmission of the FOIA Request virtually immediately, on July 10, 2020. The statutory clock for the OMB to respond started to run on July 10, 2020, the date the request was received in the agency’s email inbox. *See Competitive Enter. Inst.*, 232 F. Supp. 3d at 182.

129. More than 10 calendar days have passed since the Brennan Center’s FOIA Request was sent via email and received by the OMB on July 10, 2020. *See Exhibits I, GG.* Ten calendar days from July 10, 2020 was July 20, 2020.

130. More than 20 working days have passed since the Brennan Center’s FOIA Request was sent via email and received by the OMB on July 10, 2020. *See Exhibits I, GG.* Twenty working days from July 10, 2020 was August 7, 2020.

131. More than 10 calendar days have passed since the Brennan Center’s renewed request for expedited processing in its Supplemental Expedited Processing Letter was sent via email and received by the OMB on August 13, 2020. *See Exhibit R.* Because August 23, 2020 was a Sunday, the statutory ten-calendar-day period expired on August 24, 2020.

132. As of the filing of this Complaint, besides providing a tracking number, the OMB has not communicated *at all* with the Brennan Center regarding its FOIA Request. The OMB has not responded to the Brennan Center’s requested for expedited processing. The OMB has neither informed the Brennan Center of any determination as to whether it will comply with the request,

nor produced any records in response to the request. The OMB has not responded to the Brennan Center's fee waiver request made pursuant to 5 C.F.R. § 1303.94(a).

CLAIMS FOR RELIEF

Count I (Against All Defendants Other Than Civil Rights Division and Office of Legal Counsel): Violation of FOIA, 5 U.S.C. § 552; Failure to Respond to Request for Expedited Processing

133. The Brennan Center restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

134. FOIA provides that, upon request, agencies are to make a determination “of whether to provide expedited processing” “within 10 days after the date of the request.” 5 U.S.C. § 552(a)(6)(E)(ii)(I).

135. The Brennan Center has a statutory right, 5 U.S.C. § 552(a)(6)(E)(i), and regulatory rights, 15 C.F.R. § 4.6(f) (Commerce Department and Census Bureau); 28 C.F.R. § 16.5(e) (Department of Justice components); 5 C.F.R. § 1303.40(e) (OMB), to request expedited processing. As such, the Brennan Center made an expedited processing request in its FOIA Requests and Supplemental Expedited Processing Letters to all Defendants.

136. As of the filing of this Complaint, the Brennan Center has not received *any* communication regarding its expedited processing requests from the Commerce Department or the OMB. *See* Exhibits AA, GG.

137. The Census Bureau, Office of the Attorney General, Office of the Associate Attorney General, Office of the Deputy Attorney General, and Office of Legal Policy have failed to respond to the Brennan Center's renewed request for expedited processing in its Supplemental Expedited Processing Letters within 10 days.

138. The failure of each of the Defendants named in the prior two paragraphs to respond to the Brennan Center's expedited processing requests within the statutorily mandated time frame violates 5 U.S.C. § 552(a)(6)(E)(ii)(I).

**Count II (Against All Defendants Other Than
Civil Rights Division and Office of Legal Counsel):
Violation of FOIA, 5 U.S.C. § 552; Failure to Grant Request for Expedited Processing**

139. The Brennan Center restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

140. FOIA provides that agencies must promulgate regulations providing for expedited processing of requests for records when “made by a person primarily engaged in disseminating information” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity,” and “in other cases determined by the agency.” 5 U.S.C. §§ 552(a)(6)(E)(i), (v).

141. The Brennan Center requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and Defendants' relevant regulations, 15 C.F.R. §§ 4.6(f)(iii), (iv) (Commerce Department and Census Bureau); 28 C.F.R. §§ 16.5(e)(1)(ii), (iv) (Department of Justice components); and 5 C.F.R. §§ 1303.40(e)(1)(ii), (iv) (OMB).

142. The Census Bureau, Office of the Attorney General, Office of the Associate Attorney General, Office of the Deputy Attorney General, and Office of Legal Policy denied the Brennan Center's expedited processing request in its FOIA Requests before receiving the Supplemental Expedited Processing Letters. *See* Exhibits K, M-O, Q, BB, DD. These Defendants did not respond to the expedited processing request in the Supplemental Expedited Processing Letter.

143. The Commerce Department and the OMB have failed to respond *at all* to the Brennan Center's expedited processing requests. *See* Exhibits AA, GG.

144. The failure of each of the Defendants named in the prior two paragraphs to grant the Brennan Center's expedited processing requests violates 5 U.S.C. § 552.

**Count III (Against Civil
Rights Division and Office of Legal Counsel):
Violation of FOIA, 5 U.S.C. § 552; Failure to Provide
Expedited Processing Despite Purported Grant of Request to Expedite**

145. The Brennan Center restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

146. FOIA provides that agencies must promulgate regulations providing for expedited processing of requests for records when “made by a person primarily engaged in disseminating information” and there is an “urgency to inform the public concerning actual or alleged Federal Government activity,” and “in other cases determined by the agency.” 5 U.S.C. §§ 552(a)(6)(E)(i), (v).

147. The Brennan Center requested expedited processing in its FOIA Requests to the Civil Rights Division and Office of Legal Counsel pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. §§ 16.5(e)(1)(ii), (iv).

148. The Civil Rights Division has failed to process the Brennan Center's FOIA Request in an expedited manner. While on August 14, 2020 the Civil Rights Division purported to grant the Brennan Center's request for expedited processing, the Civil Rights Division did *not* indicate when it would provide agency records nor has the Brennan Center received any agency records responsive to its FOIA Request. *See* Exhibit HH.

149. The Office of Legal Counsel has failed to process the Brennan Center's FOIA Request in an expedited manner. First, the Office of Legal Counsel denied the Brennan Center's

request for expedited processing on July 10, 2020. *See* Exhibit EE. Then 21 calendar days after receiving the Brennan Center’s Supplemental Expedited Letter, the Office of Legal Counsel purported to grant the request on September 4, 2020. *See* Exhibits P, FF. In its September 4, 2020 letter, the Office of Legal Counsel did *not* indicate when it would provide agency records nor has the Brennan Center received any agency records responsive to its FOIA Request. *See* Exhibit FF.

150. The Civil Rights Division’s and Office of Legal Counsel’s failures to comply with their grants of expedited processing of the Brennan Center’s FOIA Requests violate 5 U.S.C. § 552.

**Count IV (Against All Defendants):
Violation of FOIA, 5 U.S.C. § 552; Failure to Comply with
Statutory Deadline and Wrongful Withholding of Agency Records**

151. The Brennan Center restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

152. FOIA requires agencies to determine within 20 working days after the receipt of any FOIA request whether to comply with the request and “shall immediately notify the person making such request of such determination and the reasons therefor.” 5 U.S.C. § 552(a)(6)(A)(i). Within the 20 working days, the agency is required to “(i) gather and review the documents; (ii) determine and communicate the scope of the documents it intends to produce and withhold, and the reasons for withholding any documents; and (iii) inform the requester that it can appeal whatever portion of the ‘determination’ is adverse.” *Citizens for Responsibility & Ethics in Wash.*, 711 F.3d at 188–89. FOIA also provides that, upon request, agencies are to make records “promptly available.” 5 U.S.C. § 552(a)(3)(A).

153. FOIA allows agencies “an additional 10 days” if the agency “has determined that unusual circumstances apply . . . and the agency provided a timely written notice to the requester.” 5 U.S.C. § 552(a)(4)(A)(viii)(II)(aa).

154. Each of the Defendants was obligated by statute to fully respond to the FOIA Request, as specified above, within 20 working days of the Defendant’s receipt of the request or, if and only if the Defendant properly invoked the provision for an additional 10 days, within 30 working days of the Defendant’s receipt of the requests.

155. Each and every one of the Defendants has failed to comply with the legal obligations set forth in the foregoing paragraph. In fact, none of the Defendants have provided the Brennan Center with any indication that they have even begun to comply with those obligations.

156. For the foregoing reasons, each and every Defendant is unlawfully withholding, and failing to disclose, numerous agency records sought by the FOIA Requests in violation of 5 U.S.C. § 552.

157. The Brennan Center is being harmed by the Defendants’ unlawful withholding of the requested agency records, and the Brennan Center will continue to be harmed until the Defendants comply with the FOIA requirements.

**Count V (Against All
Defendants Other Than Census Bureau):
Violation of FOIA, 5 U.S.C. § 552; Failure
to Respond to and/or Grant Request for Fee Waiver**

158. The Brennan Center restates and incorporates by reference each of the foregoing paragraphs as if fully set forth herein.

159. FOIA requires agencies to promulgate regulations specifying the schedule of fees applicable to the processing of requests, including fee waivers for records sought for commercial use or by an educational institution, noncommercial scientific institution, or by representatives of

the news media. 5 U.S.C. § 552(a)(4)(A)(i)-(ii). FOIA also requires agencies to waive fees if “disclosure of the information is in the public interest.” 5 U.S.C. § 552(a)(4)(A)(iii).

160. FOIA prohibits an agency from assessing any search fees if the agency fails to comply with the statutory deadlines, as is the case here, except in cases where the agency has provided timely notice of unusual circumstances or if the court has determined that exceptional circumstances exist. 5 U.S.C. § 552(a)(4)(A)(viii).

161. The Brennan Center has a statutory right, 5 U.S.C. § 552(a)(4)(A), and regulatory rights, 15 C.F.R. § 4.11(l) (Commerce Department and Census Bureau); 28 C.F.R. § 16.10(k) (United States Department of Justice components); 5 C.F.R. § 1303.94(a) (OMB), to request a fee waiver. As such, the Brennan Center made requests for fee waivers in its FOIA Requests to all Defendants.

162. As of the filing of this Complaint, the Brennan Center has not received *any* communication regarding its fee waiver requests from the Commerce Department, Civil Rights Division, or OMB. *See* Exhibits AA, CC, GG, HH.

163. As of this filing of this Complaint, the Brennan Center has not received a decision regarding its fee waiver requests from the Office of the Attorney General, Office of the Associate Attorney General, Office of the Deputy Attorney General, Office of Legal Counsel, and Office of Legal Policy. *See* Exhibits DD, EE, FF.

164. The failure of each of the Defendants named in the prior two paragraphs to respond to the Brennan Center’s fee waiver request is a violation of 5 U.S.C. § 552.

165. The failure of each of the Defendants named in paragraphs 162 and 163 to grant the Brennan Center’s fee waiver request violates 5 U.S.C. § 552.

PRAYER FOR RELIEF

The Brennan Center requests that this Court:

1. Assume jurisdiction in this matter and maintain jurisdiction until the Defendants comply with FOIA and every order of this Court;
2. Preliminarily and permanently enjoin each and every Defendant to complete its processing and response to the FOIA Requests, including by disclosing all responsive agency records not demonstrated by Defendants to be properly exempt from disclosure, within 30 days of the filing of this action;
3. Declare that Defendants' failure to respond to the Brennan Center's request for expedited processing within the statutory time violates 5 U.S.C. § 552(a)(6)(E)(ii)(I);
4. Declare that the Defendants' failure to grant the Brennan Center's request for expedited processing violates 5 U.S.C. § 552(a)(6)(E);
5. Declare that the Defendants Civil Rights Division and Office of Legal Counsel's failures to provide expedited processing after ostensibly granting the Brennan Center's requests for expedited processing violate 5 U.S.C. § 552(a)(6)(E)(iii);
6. Declare that Defendants' failure to make a determination whether to comply with the Brennan Center's request within the statutory time frame violates 5 U.S.C. § 552(a)(6)(A)(i);
7. Declare that Defendants' failure to promptly disclose the records responsive to the Brennan Center's request violates FOIA, 5 U.S.C. §§ 552(a)(6)(A)(i) & (a)(3)(A);
8. Order the Defendants to expeditiously conduct an adequate search for all records responsive to the Brennan Center's FOIA request in accordance with 5 U.S.C. § 552(a)(3)(C);
9. Order the Defendants to expeditiously disclose all responsive, non-exempt records at no cost;

10. Enjoin the Defendants from continuing to improperly withhold any and all non-exempt responsive records;

11. Award the Brennan Center's attorneys their fees and other litigation costs reasonably incurred pursuant to 5 U.S.C. § 552(a)(4)(E); and

12. Grant such other relief as this Court deems just and proper.

Dated: September 21, 2020

Respectfully submitted,

/s/ Patrick Carome

Patrick Carome (D.C. Bar No. 385676)

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Counsel for plaintiff

* *Pro Hac Vice* motions forthcoming

Exhibit A

Department of Commerce

WILMERHALE

July 1, 2020

By Electronic Mail

United States Department of Commerce
Office of Privacy and Open Government
14th and Constitution Avenue NW
Mail Stop 61013
Washington, DC 20230

Re: Freedom of Information Act Request

Dear Sir or Madam:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Department of Commerce, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:
 - calculating or otherwise formulating the 2020 total national population;

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute
- Eric W. Lee, Judicial Watch

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- Eric Ueland, White House Office of Legislative Affairs
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation
- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata

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- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

In searching for records that are responsive to each of the four foregoing requests, please be sure to search the electronic records (including email and text messages) and non-electronic records of each person within your agency who might have any responsive records, and, in addition, please search, in particular, the electronic records and non-electronic records of each of the following persons:

- Adam Korzeniewski, Former Advisor to the Department of Commerce¹⁰
- David Dewhirst, Formerly of Department of Commerce
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Peter B. Davidson, Department of Commerce
- Nathaniel Cogley, Former Advisor to the Department of Commerce¹¹

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f) and rely on two justifications for the request.

The Department of Commerce must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹² exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹³ Both bases are satisfied by this request.

¹⁰ See Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. Times (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html>.

¹¹ See *id.*

¹² 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f)(iii).

¹³ 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

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First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹⁴ in conjunction with the 2020 Census reporting.¹⁵ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for apportioning their legislatures and/or redrawing their electoral districts.¹⁶ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁷ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁸ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁹

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.²⁰ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for

¹⁴ See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹⁵ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

¹⁶ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁷ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁸ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁹ 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f)(iii).

²⁰ 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

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apportioning Congress, and contravene the Census Bureau's current policy.²¹ Modeling shows how significantly the use of citizenship data would affect apportionment.²²

The federal government's actual or alleged activity includes at least the following:²³ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²⁴ Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²⁵ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁶

²¹ See U.S. Const. amend. XIV, § 2 (mandating that "[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state"); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary's findings that "small changes in adjustment methodology would have a large impact upon apportionment" and that any adjustment "might open the door to political tampering in the future."). Efforts to use citizenship data in light of the Census Bureau's policy raises the specter of political tampering.

²² See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 15 C.F.R. § 4.6(f)(iv).

²⁴ See Wang, *supra* note 4.

²⁵ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 15 C.F.R. § 4.6(f)(iv). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁶ 5 U.S.C. § 552(a)(6)(E)(vi) and 15 C.F.R. § 4.6(f)(3).

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Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁷

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure “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 Brennan Center.²⁸ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁹

A. Disclosure Is in the Public Interest

The records requested satisfy the two factors used by the Department of Commerce when determining whether to waive fees: (i) disclosure “is in the public interest”; and (ii) disclosure “is not primarily in the commercial interest of” the Brennan Center.³⁰

The information requested satisfies the Department of Commerce’s four factor “public interest” test: (i) the records requested concern the operations or activities of the government; (ii) disclosure is likely to contribute to an understanding of government operations or activities; (iii) disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject; and (iv) disclosure is likely to contribute significantly to public understanding of government operations or activities.³¹

First, the records requested “concern identifiable operations or activities of the Federal Government”³² because they relate to: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

²⁷ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 15 C.F.R. § 4.6(f)(4).

²⁸ 5 U.S.C. § 552(a)(4)(A)(iii) and 15 C.F.R. § 4.11(l)(1)(i)–(ii).

²⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii)–(iii), (d)(1).

³⁰ 15 C.F.R. § 4.11(l)(1)(i)–(ii).

³¹ See *id.* § 4.11(l)(2)(i)–(iv).

³² 15 C.F.R. § 4.11(l)(2)(i).

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Second, disclosure would be “meaningfully informative about Government operations or activities”³³ because the records requested will provide firsthand evidence about how the federal government plans to use citizenship data in apportionment and which groups or individuals outside the government it has consulted in forming those plans.

Third, disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” because the Department of Commerce “presumes that a representative of the news media,” such as the Brennan Center, “satisfies this consideration.”³⁴ As discussed in more detail below, the Brennan Center qualifies as a representative of the news media because it broadly disseminates information to the public about issues affecting justice and democracy, including the census. Through articles on its frequently visited website, brennancenter.org, and through its widely read research reports,³⁵ the Brennan Center is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”³⁶ Even if the Brennan Center were not a representative of the news media, this third factor would be satisfied because apportionment affects every single person living in the United States. Information about how citizenship data might be used in apportionment will therefore contribute to the understanding of members of the American public whose representational rights are directly impacted by apportionment.

Fourth, the public’s understanding of how the federal government plans to use citizenship data for apportionment purposes will be “significantly enhanced by the disclosure” because, aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data.

Requestors also satisfy the “commercial interest” condition for a fee waiver because disclosure of the records requested “is not primarily in the commercial interest of” the Brennan Center.³⁷ The Brennan Center is a 501(c)(3) non-profit organization and does not seek the requested records for commercial use.³⁸ Instead, the Center plans to analyze, publish, and

³³ *Id.* § 4.11(1)(2)(ii).

³⁴ *Id.* § 4.11(1)(2)(iii).

³⁵ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³⁶ 15 C.F.R. § 4.11(a)(6).

³⁷ *Id.* § 4.11(1)(3).

³⁸ See *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

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publicly disseminate the information requested at no cost. Moreover, the Department of Commerce “ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester[,]” not commercial use.³⁹ As explained above, the Brennan Center is a representative of the news media and has satisfied the public interest standard.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.⁴⁰ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”⁴¹ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”⁴²

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.⁴³ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is an “institution of graduate higher education” falling under the Department of Commerce’s definition of an “[e]ducational institution.”⁴⁴

³⁹ 15 C.F.R. § 4.11(l)(3)(ii).

⁴⁰ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii).

⁴¹ 15 C.F.R. § 4.11(b)(5).

⁴² *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

⁴³ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii).

⁴⁴ 15 C.F.R. § 4.11(b)(4).

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D. The Brennan Center is a Representative of the News Media

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴⁵ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴⁶ Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴⁷ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁸

The Brennan Center regularly publishes news articles and research reports on its website, brennancenter.org, which was visited by 1.9 million people in 2019.⁴⁹ The Center gathers information about the American political system, synthesizes that research, and reports that information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

⁴⁵ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(iii).

⁴⁶ See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴⁷ 5 U.S.C. § 552(a)(4)(A)(ii) and 15 C.F.R. § 4.11(b)(6).

⁴⁸ See *Cause of Action*, 799 F.3d at 1123.

⁴⁹ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome
Mikayla C. Foster
Jared V. Grubow
Christian Ronald
Rieko H. Shepherd
Counsel for Requestors

Exhibit B

Census Bureau

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July 21, 2020

By Electronic Mail

Vernon E. Curry, PMP, CIPP/G
U.S. Census Bureau, Room 3J235
4600 Silver Hill Road
Washington, DC 20233-3700

Cc: Deloris Reed
U.S. Census Bureau, Room 3J235
4600 Silver Hill Road
Washington, DC 20233-3700

Re: July 1, 2020 Brennan Center for Justice at NYU School of Law's Submission of Freedom of Information Act Request

Dear Mr. Curry and Ms. Reed:

On July 1, 2020, our office delivered a Freedom of Information Act ("FOIA") request on behalf of our client, the Brennan Center for Justice at NYU School of Law (the "Requestors"). The July 1, 2020 FOIA Request is attached. As the request indicates, the letter was mailed to the Census Bureau's FOIA Office located at 4600 Silver Hill Road, Washington, DC 20233-3700. On July 21, 2020, we received notice that the letter was "Returned Undelivered."

We spoke with Ms. Reed, at approximately 1:14 p.m. on July 21, 2020 who confirmed that we mailed the request to the accurate address and was unsure why it was returned. Ms. Reed then directed us to resend the request by email at this address, census.foia@census.gov, and said we would receive a confirmation. We are following these instructions and resubmitting the request in this manner.

Please note that this is a time sensitive request and we have asked for expedited processing (see July 1, 2020 FOIA Request attached). Since our initial request was returned, media interest surrounding the census and the President's involvement has continued to

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escalate.¹ Therefore, we request that you please provide special expedited processing, backdating the request to July 1, 2020, on account of the error in the delivery. We are sensitive to the delays and unusual working circumstances caused by the coronavirus pandemic, but point out that your website does not indicate you were not accepting any requests by mail. Your website states:

Guest users are welcome to use the FOIAonline system to submit requests, search for previously released records, and generate reports, but the tracking and communications features will not be available.

Requests can also be submitted to the Census Bureau by paper copy (Privacy Act statement.) When making a request, please include a mailing address so we may contact you if necessary. Keep a copy of your request; you may need to refer to it for further correspondence with the agency.²

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

¹ As we indicated in our initial request, how the Trump administration plans to use citizenship data to affect reapportionment, in contravention of the Constitution and Census Bureau policy, raises questions about the government's integrity and is the subject of intense media speculation. *See, e.g.*, Andrew Restuccia, *Trump Moves to Exclude Those in U.S. Illegally From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083?mod=searchresults&page=1&pos=1>; David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002>; Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress' Seats*, NRP (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat>; Mica Rosenberg, Nick Brown & Mimi Dwyer, *Trump Orders Voting Districts to Exclude People in U.S. Illegally*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-usa-trump-migrants-census/trump-aims-to-stop-counting-of-illegal-migrants-in-redrawing-of-us-voting-maps-idUSKCN24M26U>; Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdfb1af38_story.html; Anita Kumar, *Trump Tries to Restrict Undocumented Immigrants from Census Count*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241>; Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html>; Maya King, *Census Bureau Spends Millions on Ads Combating Citizenship Question Scare*, POLITICO (Feb. 18, 2020), <https://www.politico.com/news/2020/02/18/census-bureau-ads-citizenship-question-115718>; Chris Dunn, *The Long Fight to Protect the 2020 Census from Trump*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/opinion/long-fight-protect-2020-census-trump>; Jake Sherman (@JakeSherman), TWITTER (July 17, 2020), <https://twitter.com/JakeSherman/status/1284172980050898945>; Leah Litman (@LeahLitman), TWITTER (July 17, 2020), <https://twitter.com/leahlitman/status/1284172866901159937?s=21>; Joshua A. Geltzer (@jgeltzer), TWITTER (July 17, 2020), <https://twitter.com/jgeltzer/status/1284181260038963201?s=21>.

² *How do I File a FOIA Request*, CENSUS BUREAU, https://www.census.gov/about/policies/foia/foia-requests/how_to_file_a_foia_request.html (last visited July 21, 2020).

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Respectfully,

/s/ Patrick Carome

Patrick Carome
Mikayla C. Foster
Jared V. Grubow
Rieko H. Shepherd
Counsel for Requestors

WILMERHALE

July 1, 2020

By Mail

ATTN: FOIA Office
U.S. Census Bureau, Room 3J235
4600 Silver Hill Road
Washington, DC 20233-3700

Re: Freedom of Information Act Request

Dear Sir or Madam:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Census Bureau, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

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Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:
 - calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau's policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau's policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau and Former Advisor to the Department of Commerce
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute
- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau and Former Advisor to the Department of Commerce
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation
- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata

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- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

In searching for records that are responsive to each of the four foregoing requests, please be sure to search the electronic records (including email and text messages) and non-electronic records of each person within your agency who might have any responsive records, and, in addition, please search, in particular, the electronic records and non-electronic records of each of the following persons:

- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau and
- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f) and rely on two justifications for the request.

The Department of Commerce must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f)(iii).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

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collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f)(iii).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

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apportioning Congress, and contravene the Census Bureau's current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that "[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state"); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary's findings that "small changes in adjustment methodology would have a large impact upon apportionment" and that any adjustment "might open the door to political tampering in the future."). Efforts to use citizenship data in light of the Census Bureau's policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 15 C.F.R. § 4.6(f)(iv).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 15 C.F.R. § 4.6(f)(iv). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 15 C.F.R. § 4.6(f)(3).

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Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure “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 Brennan Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. Disclosure Is in the Public Interest

The records requested satisfy the two factors used by the Department of Commerce when determining whether to waive fees: (i) disclosure “is in the public interest”; and (ii) disclosure “is not primarily in the commercial interest of” the Brennan Center.²⁸

The information requested satisfies the Department of Commerce’s four factor “public interest” test: (i) the records requested concern the operations or activities of the government; (ii) disclosure is likely to contribute to an understanding of government operations or activities; (iii) disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject; and (iv) disclosure is likely to contribute significantly to public understanding of government operations or activities.²⁹

First, the records requested “concern identifiable operations or activities of the Federal Government”³⁰ because they relate to: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 15 C.F.R. § 4.6(f)(4).

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 15 C.F.R. § 4.11(l)(1)(i)–(ii).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii)–(iii), (d)(1).

²⁸ 15 C.F.R. § 4.11(l)(1)(i)–(ii).

²⁹ See *id.* § 4.11(l)(2)(i)–(iv).

³⁰ 15 C.F.R. § 4.11(l)(2)(i).

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Second, disclosure would be “meaningfully informative about Government operations or activities”³¹ because the records requested will provide firsthand evidence about how the federal government plans to use citizenship data in apportionment and which groups or individuals outside the government it has consulted in forming those plans.

Third, disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” because the Department of Commerce “presumes that a representative of the news media,” such as the Brennan Center, “satisfies this consideration.”³² As discussed in more detail below, the Brennan Center qualifies as a representative of the news media because it broadly disseminates information to the public about issues affecting justice and democracy, including the census. Through articles on its frequently visited website, brennancenter.org, and through its widely read research reports,³³ the Brennan Center is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”³⁴ Even if the Brennan Center were not a representative of the news media, this third factor would be satisfied because apportionment affects every single person living in the United States. Information about how citizenship data might be used in apportionment will therefore contribute to the understanding of members of the American public whose representational rights are directly impacted by apportionment.

Fourth, the public’s understanding of how the federal government plans to use citizenship data for apportionment purposes will be “significantly enhanced by the disclosure” because, aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data.

Requestors also satisfy the “commercial interest” condition for a fee waiver because disclosure of the records requested “is not primarily in the commercial interest of” the Brennan Center.³⁵ The Brennan Center is a 501(c)(3) non-profit organization and does not seek the requested records for commercial use.³⁶ Instead, the Center plans to analyze, publish, and

³¹ *Id.* § 4.11(1)(2)(ii).

³² *Id.* § 4.11(1)(2)(iii).

³³ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³⁴ 15 C.F.R. § 4.11(a)(6).

³⁵ *Id.* § 4.11(1)(3).

³⁶ See *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

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publicly disseminate the information requested at no cost. Moreover, the Department of Commerce “ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester[,]” not commercial use.³⁷ As explained above, the Brennan Center is a representative of the news media and has satisfied the public interest standard.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁸ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁹ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”⁴⁰

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.⁴¹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is an “institution of graduate higher education” falling under the Department of Commerce’s definition of an “[e]ducational institution.”⁴²

³⁷ 15 C.F.R. § 4.11(l)(3)(ii).

³⁸ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii).

³⁹ 15 C.F.R. § 4.11(b)(5).

⁴⁰ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii).

⁴² 15 C.F.R. § 4.11(b)(4).

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D. The Brennan Center is a Representative of the News Media

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴³ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴⁴ Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴⁵ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁶

The Brennan Center regularly publishes news articles and research reports on its website, brennancenter.org, which was visited by 1.9 million people in 2019.⁴⁷ The Center gathers information about the American political system, synthesizes that research, and reports that information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

⁴³ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(iii).

⁴⁴ See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴⁵ 5 U.S.C. § 552(a)(4)(A)(ii) and 15 C.F.R. § 4.11(b)(6).

⁴⁶ See *Cause of Action*, 799 F.3d at 1123.

⁴⁷ See *2019 Annual Report 15*, Brennan Ctr, (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome

Mikayla C. Foster

Jared V. Grubow

Christian Ronald

Rieko H. Shepherd

Counsel for Requestors

Exhibit C

Civil Rights Division

Department of Justice

WILMERHALE

July 1, 2020

By Electronic Mail

United States Department of Justice
Civil Rights Division

FOIA/PA Branch
Civil Rights Division
BICN, Room 3234
950 Pennsylvania Ave, N.W.
Washington DC 20530

Re: Freedom of Information Act Request

Dear Sir or Madam:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Department of Justice, Civil Rights Division, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation

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- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, the Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome
Patrick Carome
Mikayla C. Foster
Jared V. Grubow
Christian Ronald
Rieko H. Shepherd
Counsel for Requestors

Exhibit D

Office of the Attorney General

Department of Justice

WILMERHALE

July 1, 2020

By Mail

United States Department of Justice
Office of the Attorney General

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
6th Floor
441 G. Street, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Sir:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Department of Justice, Office of the Attorney General, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:
 - calculating or otherwise formulating the 2020 total national population;

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:
- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
 - Christopher C. Demuth, Sr., Hudson Institute
 - Christopher J. Hajec, Immigration Reform Law Institute
 - David Dewhirst, Formerly of Department of Commerce
 - Eric Ueland, White House Office of Legislative Affairs
 - Eric W. Lee, Judicial Watch

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation
- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee

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- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, the Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome
Patrick Carome
Mikayla C. Foster
Jared V. Grubow
Christian Ronald
Rieko H. Shepherd
Counsel for Requestors

Exhibit E

Office of the Associate Attorney General

Department of Justice

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July 1, 2020

By Mail

United States Department of Justice
Office of the Associate Attorney General

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
6th Floor
441 G. Street, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Sir:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Department of Justice, Office of the Associate Attorney General, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
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- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
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- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation

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- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

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Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

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¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared W. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
120 Broadway
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome

Mikayla C. Foster

Jared V. Grubow

Christian Ronald

Rieko H. Shepherd

Counsel for Requestors

Exhibit F

Office of the Deputy Attorney General

Department of Justice

WILMERHALE

July 1, 2020

By Mail

United States Department of Justice
Office of the Deputy Attorney General

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
6th Floor
441 G. Street, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Sir:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestor”), we respectfully request all records in the possession of the Department of Justice, Office of the Deputy Attorney General, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation

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- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared W. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
120 Broadway
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome

Mikayla C. Foster

Jared V. Grubow

Christian Ronald

Rieko H. Shepherd

Counsel for Requestors

Exhibit G

Office of Legal Counsel

Department of Justice

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July 1, 2020

By Electronic Mail

United States Department of Justice
Office of Legal Counsel

Melissa Golden
Lead Paralegal and FOIA Specialist
Office of Legal Counsel
Room 5511, 950 Pennsylvania Avenue, N.W.
Department of Justice
Washington, DC 20530-0001

Re: Freedom of Information Act Request

Dear Madam:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requests”), we respectfully request all records in the possession of the Department of Justice, Office of Legal Counsel, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation

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- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared W. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
120 Broadway
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome

Mikayla C. Foster

Jared V. Grubow

Christian Ronald

Rieko H. Shepherd

Counsel for Requestors

Exhibit H

Office of Legal Policy

Department of Justice

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July 1, 2020

By Mail

United States Department of Justice
Office of Legal Policy

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
6th Floor
441 G. Street, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Sir:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Department of Justice, Office of Legal Policy, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
 - 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
 - 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation

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- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared W. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
120 Broadway
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome

Mikayla C. Foster

Jared V. Grubow

Christian Ronald

Rieko H. Shepherd

Counsel for Requestors

Exhibit I

Office of Management and Budget

WILMERHALE

July 10, 2020

By Electronic Mail

Dionne Hardy
FOIA Officer
Office of Management and Budget
725 17th Street NW, Suite 9204
Washington, DC 20503
OMBFOIA@omb.eop.gov

Re: Freedom of Information Act Request

Dear Madam:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Office of Management and Budget (“OMB”), including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

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Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:
 - calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
 - 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
 - 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute
- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation
- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee

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- Restoring Liberty Action Committee
- The Senior Citizens League

In searching for records that are responsive to each of the four foregoing requests, please be sure to search the electronic records (including email and text messages) and non-electronic records of each person within your agency who might have any responsive records, and, in addition, please search, in particular, the electronic records and non-electronic records of each of the following persons:

- Russ Vought, Deputy Director of the Office of Management and Budget

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.40(e) and rely on two justifications for the request.

The OMB must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional public interest about the government’s integrity which effect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made.¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional public interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.40(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 5 C.F.R. § 1303.40(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises questions “about the government’s integrity which effect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

The federal government’s actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.40(e)(iv).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 5 C.F.R. § 1303.40(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 5 C.F.R. § 1303.40(e)(ii).

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Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in disseminating information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 5 C.F.R. § 1303.40(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 5 C.F.R. § 1303.40(e)(4).

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 5 C.F.R. § 1303.94(a).

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noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the OMB when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,”²⁹ namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”³⁰ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³¹ about the 2020 Census through its reports and frequently visited website.³² All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 C.F.R. § 1303.92(b)–(c).

²⁸ 5 C.F.R. § 1303.94(b)(1)–(3).

²⁹ *Id.* § 1303.94(b)(1).

³⁰ *Id.* § 1303.94(b)(2), (b)(2)(i)–(ii).

³¹ *Id.* § 1303.94(b)(2)(ii).

³² See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

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Third, the records requested are not “primarily in the commercial interest of” the Brennan Center.³³ The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³⁴ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the OMB “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (b)(1) and (2) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁵ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁶ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁷ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁸ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁹

³³ 5 C.F.R. § 1303.94(b)(3).

³⁴ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁵ 5 C.F.R. § 1303.94(b)(3)(ii).

³⁶ *Id.* § 1303.90(h).

³⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 C.F.R. § 1303.90(g).

³⁸ 5 C.F.R. § 1303.90(g).

³⁹ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

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C. *The Brennan Center is an Educational Institution*

If the Brennan Center's request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.⁴⁰ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a "school that operates a program of scholarly research" falling under the OMB's definition of an "educational institution."⁴¹

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴² Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴³ Rather, a representative of the news media is defined as "any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience."⁴⁴ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁵

The Brennan Center regularly publishes news articles and research reports on its website, brennancenter.org, which was visited by 1.9 million people in 2019.⁴⁶ The Center gathers information about the American political system, synthesizes that research, and reports that information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$100.00.

⁴⁰ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 C.F.R. § 1303.90(f).

⁴¹ 5 C.F.R. § 1303.90(f).

⁴² See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 C.F.R. § 1303.90(h).

⁴³ See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴⁴ 5 U.S.C. § 552(a)(4)(A)(ii) and 5 C.F.R. § 1303.90(h).

⁴⁵ See *Cause of Action*, 799 F.3d at 1123.

⁴⁶ See 2019 Annual Report 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome
Patrick Carome
Mikayla C. Foster
Jared V. Grubow
Christian Ronald
Rieko H. Shepherd
Counsel for Requestors

Exhibit J

Department of Commerce

WILMERHALE

August 13, 2020

By Electronic Mail

United States Department of Commerce
Office of Privacy and Open Government
14th and Constitution Avenue NW
Washington, DC 20530-0001

Re: July 1, 2020 Brennan Center for Justice at NYU School of Law's Submission of Freedom of Information Act Request

Dear Sir or Madam:

On July 1, 2020, our office delivered a Freedom of Information Act ("FOIA") request on behalf of our client, the Brennan Center for Justice at NYU School of Law (the "Brennan Center" or the "Requestors") to the United States Department of Commerce via electronic mail to eFOIA@doc.gov (the "FOIA Request"). The FOIA Request is attached hereto as "Exhibit A."

We have not received a decision regarding our expedited processing request within 10 calendar days as required by 5 U.S.C. § 552(a)(6)(E)(ii)(I) or a response to the FOIA Request itself within 20 working days as required by 5 U.S.C. § 552(a)(6)(A)(i). On July 24, 2020, we made several attempts to contact the Department of Commerce FOIA Office, leaving a message on the main line and for Bobbie Parsons, the Deputy Chief FOIA Officer.

We submit this letter to follow up on the FOIA Request, to underscore its urgency and time sensitivity, and to supplement the record with respect to the Brennan Center's entitlement to expedited processing. The need for you to respond promptly to our request for expedited processing, as elaborated herein, is especially critical.

Renewed Request for Expedited Processing

As we explained in the July 1 FOIA Request, the Brennan Center requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f). The Department of Commerce must process requests on an expedited basis when either (1) "[a] matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence"¹ exists; or (2) there is an "[a]n urgency to inform the public about an actual or alleged Federal Government activity," and the request is made by an organization "primarily engaged in disseminating information."² Exhibit A, at 5. As we have

¹ 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f)(iii).

² 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

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not received a response, we write to emphasize that expedited processing should be granted because there is widespread and exceptional media interest surrounding the 2020 Census, specifically as it relates to its uses for reapportionment, and the reporting by news organizations on the 2020 Census has also raised possible questions about the government's integrity that affect public confidence. And as an organization primarily engaged in disseminating information, the Brennan Center urgently needs to inform the public of the information we are requesting.

Since the FOIA Request was filed, the exceptional interest surrounding the 2020 Census and the apportionment process has exploded. On July 21, 2020, President Trump issued a "Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census," 85 Fed. Reg. 44,679 (July 23, 2020), which resulted in an outpouring of media and news reports.³ Further, at the time we submitted the FOIA Request, the Census Bureau had asked Congress for a four-month extension to report the state-population totals used for reapportionment to the President, extending that deadline to April 31, 2021.⁴ But on August 3, 2020, the Census Bureau reported its plan to "accelerate the completion of data collection and apportionments counts" to meet the statutory deadline of December 31, 2020.⁵ Therefore, the Brennan Center's need to receive the agency records responsive to its request, and to receive them as soon as possible, has only become more urgent.

Additionally, the Brennan Center is an organization that is primarily engaged in the dissemination of information, and there is an urgency to inform the public about the issues surrounding the 2020 Census. The Brennan Center's efforts in law and policy are ancillary to its mission to inform and help shape public opinion. As the Brennan Center stated in its initial

³ See, e.g., Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics; Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241>; Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083>; Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress' Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat>.

⁴ See *Statement on 2020 Census Operational Adjustments Due to COVID-19*, Release No. CB20-RTQ.16, available at <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=10000001175162>

⁵ See *Statement from U.S. Census Bureau Director Steven Dillingham: Delivery a Completed and Accurate 2020 Census Count*, Release No. CB20-RTQ.23, available at <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>.

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request, it plans to use the information received from the request to inform the public about the government's plans to use citizenship data in calculating the reapportionment count, and how those plans were developed. With the Census Bureau's deadline approaching even more quickly than when the request was initially submitted, these records are urgently needed to inform the public about how the government's plans may affect their rights.

Widespread Media Interest Raising Questions of Government Integrity

As indicated in our initial request, how the Trump administration plans to use citizenship data to affect reapportionment, in contravention of the U.S. Constitution, raises questions about the government's integrity and is the subject of intense media speculation. Media interest surrounding the government's activities has persisted since the Supreme Court's ruling in June 2019. And since we submitted the July 1 FOIA Request, news articles from a variety of media sources have reported nearly daily updates on the administration's plan to collect citizenship data in conjunction with the 2020 Census, as well as its plan to truncate the timeline for conducting census operations in time to report the state-population totals to the President by December 31, 2020. We expect the influx of media attention to these matters only to continue and expand.

The courts have not specified exactly what threshold must be met for the subject matter of a FOIA request to qualify as a "matter of widespread and exceptional media interest," but, under any standard, that threshold is met here. Agencies entertaining a request for expedited processing on this basis cannot "simply turn a blind eye to the flurry of media attention" surrounding a topic. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 32 (D.D.C. 2004). Even just a "handful of articles" are sufficient to establish the "exceptional media interest" prong if those articles are "published in a variety of publications, and repeatedly reference the ongoing national discussion" about the issues at hand. *Id.*

Each of the articles listed below also indicates that there are possible questions about the Government's integrity that affect public confidence. *See Oversight v. Dep't of Justice*, 292 F. Supp. 3d 501, 505 (D.D.C. 2018) (requiring "the same matter that draws widespread and exceptional media interest [to] be the matter in which there exists possible questions about the government's integrity that affect public confidence"). A possible question about government integrity is raised where the articles indicate possible ethics issues, *id.* at 508 ("The primary way to determine whether such possible questions exist is by examining the state of public coverage of the matter at issue, and whether that coverage surfaces possible ethics issues."), or if the reports suggest the government is acting unconstitutionally, *see Am. Civil Liberties Union*, 321 F. Supp. 2d at 32 (concluding that possible questions of government integrity were raised by articles that reported on whether the issue at bar violated the constitutional rights of the public).

The articles listed below raise issues such as: (1) whether the plans revealed by the President's July 21st Memo are unconstitutional or otherwise violate federal law; (2) whether the citizenship data the Government plans to use will be accurate and thus legitimate; (3) whether

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the reapportionment counting plan affects the constitutional right to representation or affects other constitutional rights; and (4) whether the Census count is being improperly politically influenced or is otherwise lacking transparency. See *Citizens for Responsibility and Ethics in Wash. v. Dep't of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020) (“*CREW*”) (instructing that “possible questions” does not require proving “wrongdoing by the government”). The public has the right to know that the Census and the government’s use of Census data is lawful, ethical, and fair; any suggestion to the contrary affects public confidence in the government.

The myriad media reports raise possible questions about government integrity, come from a variety of publications, and are all related to the agency records requested in the July 1 FOIA Request. They, at minimum, include the following:

The Government Is Acting Unconstitutionally

- *Editorial: The census counts, so Congress must make sure there’s time to make the count accurate*, HOUS. CHRONICLE (Aug. 5, 2020), <https://www.houstonchronicle.com/opinion/editorials/article/Editorial-The-census-counts-so-Congress-must-15461351.php> (“These immigrants work, pay taxes and contribute to the community. They should be counted. Everyone should. That’s not just a good idea, it’s the law.”).
- Steven Shepard, *Census Bureau will finish count earlier than expected, deliver data to Trump*, POLITICO (Aug. 3, 2020), <https://www.politico.com/news/2020/08/03/census-bureau-data-trump-391146> (reporting that “[t]his latest scheme is nothing more than a partisan attempt at manipulating the census to benefit the president’s allies, but it plainly violates the U.S. Constitution and federal laws, and cannot stand”).
- Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics (describing three lawsuits filed challenging the government’s arbitrary and capricious decision to exclude non-citizens from the census apportionment count).
- Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html> (noting that “[t]he action directly conflicts with the traditional consensus interpretation of the Constitution”).
- Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083> (reporting on President Trump signing a memorandum “meant to exclude unauthorized immigrants from being taken into account when the government divides up congressional seats, a

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move that civil-rights groups swiftly vowed to challenge in court” and suggesting that the request may cause the Census Bureau to violate federal law).

- David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002> (reporting on President Trump’s July 21, 2020 memorandum noting that the “memo does not say how the U.S. Census Bureau could distinguish citizens from non-citizens – for any reason – because counters are prohibited from a citizenship question” and noting that Trump’s demand is “blatantly unconstitutional”).
- Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat> (recognizing that the President’s memo is without constitutional authority).
- Mica Rosenberg, Nick Brown & Mimi Dwyer, *Trump Orders Voting Districts to Exclude People in U.S. Illegally*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-usa-trump-migrants-census/trump-aims-to-stop-counting-of-illegal-migrants-in-redrawing-of-us-voting-maps-idUSKCN24M26U> (reporting that “U.S. census experts and lawyers say the action is legally dubious”).
- Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241> (reporting that “Congress has not given discretion [to the President] on what you’re supposed to be counting”).
- Kevin Liptak, Maegan Vazquez, Ariane de Vogue & Catherine E. Shoichet, *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html> (reporting that Trump’s “latest attempt to weaponize the census for an attack on immigrant communities will be found unconstitutional.”).
- Dartunorro Clark, *Trump Signs Memo to Omit Undocumented Immigrants From Census Apportionment Count*, NBC NEWS (July 21, 2020), <https://www.nbcnews.com/politics/white-house/trump-sign-executive-order-aimed-omitting-undocumented-immigrants-census-count-n1234228> (quoting advocates statements that “[t]he Constitution requires that everyone in the U.S. be counted in the census. President Trump can’t pick and choose”).
- Jordan Fabian & Greg Stohr, *Trump Bars U.S. Census From Counting Undocumented Immigrants*, BLOOMBERG (July 21, 2020), <https://www.bloomberg.com/news/articles/2020-07-21/trump-order-to-bar-census-from-counting-undocumented-immigrants> (quoting DNC President Tom Perez as saying the President’s order is “an

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unconstitutional order that has no purpose other than to silence and disempower Latino voices and communities of color”).

- Sam Levine, *Trump Orders Undocumented Immigrants Excluded From Key Census Count*, GUARDIAN (July 21, 2020), <https://www.theguardian.com/us-news/2020/jul/21/trump-executive-order-census-undocumented-immigrants> (“The Trump administration appears to be on shaky legal ground – the US constitution requires seats in Congress to be apportioned based on the ‘whole number of persons’ counted in each state during each decennial census.”).
- Matt Stieb, *Trump Tries Last-Ditch Order to Keep Undocumented Immigrants Off Census*, NEW YORK (July 21, 2020), <https://nymag.com/intelligencer/2020/07/trump-tries-last-ditch-order-to-keep-undocumented-off-census.html> (reporting that it is likely that President Trump’s order will be overturned because “the Constitution does not determine between citizens and noncitizens”).
- Nicole Narea, *Trump Is Using the Census to Undermine Immigrants’ Political Power*, VOX (July 21, 2020), <https://www.vox.com/policy-and-politics/2020/7/21/21328714/trump-executive-order-immigration-census-2020-redistricting> (explaining that the memorandum “could also indirectly discourage immigrants who have yet to respond to the census from doing so,” and that “legal experts say that it clearly flouts the US Constitution, which requires that every person in the US — not just every citizen — be counted in the census.”).
- Trevor Hughes, *Trump, Census Bureau Collect Driver’s License Data to Check Citizenship Status of Americans*, USA TODAY (July 16, 2020), <https://www.usatoday.com/story/news/nation/2020/07/16/trump-seeks-drivers-license-data-iowa-sc-check-citizenship/5445492002/> (quoting the ACLU that the sharing of license data pursuant to Executive Order 13880 “appears to be part of a scheme motivated by an unconstitutional discriminatory purpose to dilute the political power of communities of color.”).
- John Nichols, *Trump Wants to Use ‘Citizenship Data’ to Gerrymander Democracy*, THE NATION (July 13, 2019), <https://www.thenation.com/article/archive/trump-census-citizenship-data-gerrymander-democracy> (reporting that the use of citizenship data, “is a threat to the basic premises of representative democracy as they have historically been understood”).
- Tess Berenson, *President Trump Backs Down on Adding Citizenship Question to Census*, TIME (July 11, 2019), <https://time.com/5624485/trump-census-citizenship-question-pivot/> (quoting Thomas Wolf, counsel with the Brennan Center, as stating “The president doesn’t have the ability to unilaterally alter the census . . . The Trump administration is in a bind that it’s not going to be able to escape on the substance of the justification for a citizenship question.”).

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The Census Count Is Possibly Inaccurate and Possibly Illegitimate

- *What risks does ending the census count early pose?*, PBS (Aug. 9, 2020), <https://www.pbs.org/newshour/show/what-risks-does-ending-the-census-count-early-pose> (noting that the decision to shorten the Census Bureau’s operations mere weeks after the memorandum calling for unauthorized immigrants to be excluded from the census numbers used to reapportion seats in Congress is “causing a lot of confusion” and asking “are there going to be enough indicators and metrics for the Census Bureau as well as outside researchers to really make that assessment of how good is the 2020 census? *How good are these results?*”).
- *Businesses to Help Wednesday as Census ends Sept. 30*, DAILY MOUNTAIN EAGLE, (Aug. 8, 2020), <http://www.mountaineagle.com/stories/businesses-to-help-wednesday-as-census-ends-sept-30,27659> (noting that Census experts and civil rights activists worry the sped-up deadlines could affect the thoroughness of the count, which determines how many congressional districts each state gets).
- Michael Wines, *At the Census Bureau, a Technical Memo Raises Alarms Over Politics*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/us/2020-census-undocumented-immigrants.html> (reporting that an internal Census Bureau memo issued on August 3, 2020 ordered an internal task force to explore statistical methods of compiling an accurate estimate of noncitizens in an effort to carry out President Trump’s July mandate to exclude undocumented residents from the apportionment count).
- Vania Patino *Census count finishing early may cause undercount in some TX Panhandle counties*, KLTV (Aug. 6, 2020), <https://www.kltv.com/2020/08/07/census-count-finishing-early-may-cause-undercount-some-tx-panhandle-counties/> (reporting that the Census Bureau’s new deadline “seems impossible” and that it is essential for the numbers to be correct for the representation to be correct).
- Michael Wines & Richard Fausset, *With Census Count Finishing Early, Fears of a Skewed Tally Rise*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html> (quoting former Census Bureau directors warning that an earlier deadline would “result in seriously incomplete enumerations in many areas across our country.”).
- *Census to Finish Count Month Early*, WBUR (Aug. 4, 2020), <https://www.wbur.org/hereandnow/2020/08/04/census-count-cut-short> (noting that many people fear that the Census’s Bureau’s shortened operations period will reduce the accuracy of the population count).
- Hansi Lo Wang, *Census Cuts All Counting Efforts Short by a Month*, NPR (Aug. 3, 2020), <https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30> (“These last-minute changes to the constitutionally mandated count of every person living in the U.S. threaten the accuracy of population numbers used to determine the distribution of political representation and federal funding for the next decade.”).

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- Dudley L. Poston, Jr. and Teresa A. Sullivan, *Excluding Undocumented Immigrants from the 2020 U.S. House Apportionment*, UVA CTR. FOR POLITICS (July 30, 2020), <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment> (“[I]t is not clear whether the Secretary of Commerce could produce acceptable numbers of undocumented residents according to the timetable the new memorandum requires.”).
- Adam Shaw & John Roberts, *Trump Signs Order to Prevent Illegal Immigrants from Being Counted in Redrawing Of Voting Districts*, FOX NEWS (July 21, 2020), <https://www.foxnews.com/politics/trump-to-sign-order-illegal-immigrants-voting-districts> (noting that it is “not clear how the administration would determine who was in the country illegally” for purposes of determining reapportionment).
- Brett Samuels & Rafael Bernal, *Trump Aims To Bar Undocumented Immigrants From Counting Toward House Representation*, HILL (July 21, 2020), <https://thehill.com/latino/508314-trump-aims-to-bar-undocumented-immigrants-from-counting-toward-house-representation> (suggesting that the administration may be using “questionable social science data techniques” including sampling, which was struck down by the Supreme Court in 1999).
- Chris Sommerfeldt, *Trump Moves to Exclude Undocumented Immigrants From Census Data on Voting Districts*, N.Y. DAILY NEWS (July 21, 2020), <https://www.nydailynews.com/news/politics/ny-trump-memo-immigrants-voting-census-20200721-5rexsyrdbbd3vp7gqq2seu4of4-story.html> (noting that “it’s unclear how the government would be able to determine whether a resident is undocumented, since the Supreme Court blocked the Trump administration last year from adding a citizenship question to the 2020 census.”).
- Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdff1af38_story.html (noting that the administrations appointment of two “high-level political appointees to the Census Bureau ... rais[ed] concern that the new hires could attempt to influence the count”).
- Colin A. Young, *Trump Seeks to Squeeze Immigrants Out of Apportionment*, WWLP-22NEWS (July 21, 2020), <https://www.wwlp.com/news/state-politics/trump-seeks-to-squeeze-immigrants-out-of-apportionment/> (reporting that “[t]he Census, throughout our history, has always been an accurate, even count. That’s what it’s been irrespective of which party controlled Congress, controlled the presidency, and [President Trump] clearly has no such qualms about accuracy or honesty.”).
- Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census->

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bureau-cogley-korzeniewski.html (reporting that veteran Census Bureau officials are “worried that the new appointees will seek to skew the 2020 census totals in a similarly inaccurate way, accomplishing what the battle over the citizenship question failed to achieve.”).

- Hansi Lo Wang, *Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen> (“Many voting rights advocates, however, are skeptical about the accuracy of data that would be generated from historical records that often contain out-of-date information, especially about whether a person is currently a U.S. citizen.”).
- Aaron Boyd, *How Census is Building a Citizenship Database Covering Everyone Living in the U.S.*, NEXTGOV (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275/> (quoting a statement from the Census Bureau’s website about citizenship data stating “[w]e are still receiving and analyzing data from external sources, including federal and state administrative records, and require additional time for evaluation”).
- Tara Bahrapour, *Census Bureau’s Request for Citizenship Data From DMVs Raises Privacy, Accuracy Concerns*, WASH. POST (Oct. 17, 2019), https://www.washingtonpost.com/local/social-issues/census-bureaus-request-for-citizenship-data-from-dmvs-raises-privacy-accuracy-concerns/2019/10/17/aa8771f2-f114-11e9-89eb-ec56cd414732_story.html (reporting that “DMV records [requested by the Executive Order] are not necessarily updated when a person naturalizes, and said relying on such data would result in undercounts of people who became citizens after getting driver’s licenses or state IDs — a group that includes a higher proportion of minorities than the general population.”).
- Nicole Narea, *Trump is Still Trying to Collect Citizenship Data For Redistricting*, VOX (Oct. 17, 2019), <https://www.vox.com/policy-and-politics/2019/10/17/20918989/trump-2020-census-citizenship-data-redistricting-drivers-license> (quoting Dale Ho, director of the ACLU’s Voting Rights Project, as saying that state’s Department of Motor Vehicles data is concerning because it is “highly unreliable due to poor database protocols and stale citizenship data”).
- Chris Dunn, *The Long Fight to Protect the 2020 Census from Trump*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/opinion/long-fight-protect-2020-census-trump/> (“A worrisome threat to the legitimacy of this process lies with the step where the President is to certify census results to Congress.”).

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An Inaccurate Reapportionment Affects Persons' Rights

- Doug Thompson, *Time crunch has census-takers in Arkansas racing the clock*, (Aug. 9, 2020), ARK. DEMOCRAT-GAZETTE, <https://www.arkansasonline.com/news/2020/aug/09/census-count-time-cut-short-advocates-say/?latest> (affecting rights because “[i]f a county in Arkansas has a lower-than-accurate census count, it loses out on representation”).
- Megan Tomasic, *Earlier census deadline could cause W.Pa. officials to accelerate counts*, TRIB TOTAL MEDIA (July 31, 2020), <https://triblive.com/local/regional/local-leaders-respond-to-date-change-for-in-person-census-count-collection/> (estimating that the decision to cut short in-person counting efforts could result in “catastrophic outcomes for cities and towns across the country who rely on federal funding and congressional apportionment”).
- Katie Rogers, Adam Liptak, Michael Crowley & Michael Wines, *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html> (reporting on President Trump’s July 11 Rose Garden announcement that the administration’s goal is to obtain data on citizenship to eliminate noncitizens from the population bases used to draw political boundaries).
- Dan Mangan & Tucker Higgins, *Trump Abandons Fight to Put Citizenship Question on Census, Says He Can Get Data From Existing Records*, CNBC (July 11, 2019), <https://www.cnn.com/2019/07/11/trump-abandons-fight-to-put-citizenship-question-on-census.html> (quoting Dale Ho, director at the ACLU, as stating President Trump “lost in the Supreme Court, which saw through his lie about needing the question for the Voting Rights Act . . . It is clear he simply wanted to sow fear in immigrant communities and turbocharge Republican gerrymandering efforts by diluting the political influence of Latino communities.”).
- Jeff Mason & David Shepardson, *Trump Drops Census Citizenship Question, Vows to Get Data From Government*, REUTERS (July 11, 2019), <https://www.reuters.com/article/us-usa-census/trump-drops-census-citizenship-question-vows-to-get-data-from-government-idUSKCN1U61D9> (quoting Michael Waldman, president of the Brennan Center, as saying that the Brennan Center would challenge “any administration move to violate the clear and strong rules protecting the privacy of everyone’s responses, including the rules barring the use of personal census data to conduct law or immigration enforcement activities.”).

Questions and Concerns That the Census Is Being Improperly Politically Influenced

- Hansi Lo Wang, *‘Not Enough Time’: Census Workers Fear Rushing Count Could Botch Results*, (Aug. 11, 2020), <https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results> (quoting a Census field worker as

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saying about the administration's plans "It does not feel like we have the same mission in mind. We're trying to get a complete count. I'm not sure everyone on the team has the same mission." Also quoting a Senator as saying, "I believe that this deviation in schedule is driven not by expert opinions of career Census Bureau employees but by external pressure from the White House and the Department of Commerce for perceived political gain.").

- Hansi Lo Wang, *Census Door Knocking Cut a Month Short Amid Pressure to Finish Count*, NPR (July 30, 2020), <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> ("The director of the Census Bureau testified that he first learned about Trump's plans to attempt to exclude unauthorized immigrants from the census numbers used to reapportion seats in Congress not from any internal discussions, but from a news report 'late on a Friday' that said 'such a directive may be coming down.'").
- Michael Wines, *New Census Worry: A Rushed Count Could Mean a Botched One*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/us/trump-census.html> (reporting that despite admitting that "meeting that deadline is impossible," "the White House declined to address questions about its census plans. Responding to a reporter's questions, the Census Bureau issued a statement on Monday that neither confirmed nor denied an effort to hasten the completion of the count and the delivery of reapportionment figures.").
- Tara Bahrapour, *Lawmakers, inspector general demand answers on Census Bureau political appointees*, WASH. POST (July 16, 2020), https://www.washingtonpost.com/local/social-issues/lawmakers-inspector-general-demand-answers-on-census-bureau-political-appointees/2020/07/16/6c355046-c656-11ea-8ffe-372be8d82298_story.html (describing several concerns over the addition of two partisan appointees to the Census Bureau staff because the move could "politicize the decennial census, which is used to determine congressional apportionment").
- Nikita Lalwani & Rachel Brown, *Donald Trump's Efforts to Distort the Census Have Started Back Up*, SLATE (July 17, 2020), <https://slate.com/news-and-politics/2020/07/donald-trump-census-citizenship-question-executive-order-scotus.html> ("The American Statistical Association decried the news [of two new partisan appointees] as creating 'the perception—if not reality—of improper political influence.'").
- Adrian Sainz, *Commerce Department IG Seeks Info on 2 Census Hirings*, WASH. POST (July 8, 2020), https://www.washingtonpost.com/national/commerce-department-ig-seeks-info-on-2-census-hirings/2020/07/08/c5579c3a-c14f-11ea-8908-68a2b9eae9e0_story.html (citing Thomas Wolf, a counsel with the Brennan Center, that the two new Census Bureau employees appointed by the Trump administration raise concerns that the administration may try to violate longstanding protections ensuring that data is kept confidential and secure).

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- Michael Wines, *Knocked Off Track by Coronavirus, Census Announces Delay in 2020 Count*, N.Y. TIMES (Apr. 13, 2020), <https://www.nytimes.com/2020/04/13/us/census-coronavirus-delay.html> (“[A] number of experts [] said that the aura of secrecy surrounding this census, in sharp contrast to previous ones, limited support for the count and raised questions about what, if anything, was being concealed.”).
- Jeffrey Mervis, *Why the U.S. Census Bureau Could Have Trouble Complying With Trump’s Order to Count Citizens*, SCIENCE (Sept. 16, 2019), <https://www.sciencemag.org/news/2019/09/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens> (reporting that researchers fear complying with President Trump’s Executive Order could “tarnish” the Census Bureau’s “stellar reputation for nonpartisanship”).
- Hansi Lo Wang, *Trump Wants Citizenship Data Released But States Haven’t Asked Census For That*, NPR (Sept. 11, 2019), <https://www.npr.org/2019/09/11/759510775/trump-wants-citizenship-data-released-but-states-havent-asked-census-for-it> (reporting that Thomas Hofeller, a GOP redistricting strategist, concluded that detailed citizenship information could allow for redrawing of voting districts that would be “advantageous to Republicans and Non-Hispanic Whites,” but that the Trump Administration argues Hofeller’s study played little role in advocating for a citizenship question).
- Hansi Lo Wang, *Do Trump Officials Plan to Break Centuries of Precedent in Divvying Up Congress?*, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress> (reporting that the Census Bureau failed to provide clear answers as to whether citizenship would be used in the 2020 Census and factor into apportionment).

The abundance of reporting from an array of media outlets listed above overwhelmingly establishes that the July 1 FOIA Request satisfies the exceptional media interest requirement because each article raises a possible question about government integrity that affects public confidence.

For the reasons set forth above, the Brennan Center has established, and reiterates here, that there is widespread and exceptional media interest surrounding the topics in its July 1 FOIA Request. Therefore, expedited processing must be granted.

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The Brennan Center Is Primarily Engaged in Disseminating Information

The Brennan Center should be granted expedited processing as it is an organization “primarily engaged in disseminating information,” and there is “urgency to inform the public” about the issues their request identifies. 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

In *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, the court concluded that CREW⁶ was primarily engaged in disseminating information based on its assertion that its “primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials.” *CREW*, 436 F. Supp. 3d at 360–61. Similarly, the July 1 FOIA Request specifies that the Brennan Center is primarily a “cutting-edge communications hub, shaping opinion by taking our message directly to the press and public,” *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed August 13, 2020). The Brennan Center works first to inform the public of injustice in society and then uses its expertise to advance its policies. The legal and advocacy work the Brennan Center does has the purpose of creating a public record of important issues, all of which supports the notion that the Center is primarily engaged in disseminating information.

Following President Trump issuing the July 21 Memorandum, a multitude of lawsuits were filed challenging the constitutionality of the administration’s plan. As the July 1 Request specified, the Brennan Center will use the agency records received through the request to “explain to the public how citizenship data may be used to calculate the apportionment.” Exhibit A, at 7. Access to the requested documents is essential for the public to assess the Administration’s plans for using citizenship for the 2020 Census count.

Additionally, the Brennan Center has an online library with thousands of publications, articles, and reports that are publicly available,⁷ including 75 that are dedicated solely to the census such as the following:

- Thomas Wolf, Kelly Percival, and Brianna Cea, *Getting the Count Right: Key Context for the 2020 Census*, Brennan Ctr. (March 31, 2020), <https://www.brennancenter.org/sites/default/files/2020-03/CensusPrimer.pdf>.
- Kelly Percival, *Strong Confidentiality Laws Protect All Data the Census Bureau Collects*, Brennan Ctr. (Dec. 5, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/strong-confidentiality-laws-protect-all-data-census-bureau-collects>.

⁶ CREW’s website indicates that they “use[] aggressive legal action, in-depth research, and bold communications to reduce the influence of money in politics and help foster a government that is ethical and accountable.” *Who We Are, About Us*, CREW, <https://www.citizensforethics.org/who-we-are> (last accessed August 10, 2020).

⁷ *Library: A Fair & Accurate Census*, Brennan Ctr., <https://www.brennancenter.org/library/?issue=22&subissue=60&>.

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- Kelly Percival, *Trump Administration Abandons Citizenship Question*, Brennan Ctr. (July 12, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/trump-administration-abandons-citizenship-question>.
- Kelly Percival & Brianna Cea, *Annotated Guide to the Amicus Briefs in the Supreme Court's Citizenship Question Case*, Brennan Ctr. (Apr. 11, 2019), <https://www.brennancenter.org/our-work/court-cases/annotated-guide-amicus-briefs-supreme-courts-citizenship-question-case>.
- Thomas Wolf & Brianna Cea, *A Critical History of the U.S. Census & Citizenship Questions*, Brennan Ctr. (Apr. 2, 2019), <https://www.brennancenter.org/our-work/research-reports/critical-history-us-census-citizenship-questions>.
- Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.
- Brianna Cea, *Potential Shifts in Political Power After the 2020 Census*, Brennan Ctr. (March 27, 2018), <https://www.brennancenter.org/our-work/research-reports/potential-shifts-political-power-after-2020-census>.

For the foregoing reasons, we request that you promptly grant our expedited processing request and produce agency records responsive to the July 1 FOIA Request. Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

Respectfully,

/s/ Patrick Carome

Patrick Carome
Caitlin Monahan
Mikayla C. Foster
Jared V. Grubow
Rieko H. Shepherd
Counsel for Requestors

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CERTIFICATION

I hereby certify, on behalf of the Brennan Center and pursuant to 5 U.S.C. § 552(6)(E)(vi), that the content of this letter, as well as the statements supporting the Brennan Center's request for expedition set forth in the original FOIA Request, are true and correct to the best of my and the Brennan Center's knowledge and belief.

/s/ Patrick Carome

Patrick Carome

Exhibit A

WILMERHALE

July 1, 2020

By Electronic Mail

United States Department of Commerce
Office of Privacy and Open Government
14th and Constitution Avenue NW
Mail Stop 61013
Washington, DC 20230

Re: Freedom of Information Act Request

Dear Sir or Madam:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Department of Commerce, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:
 - calculating or otherwise formulating the 2020 total national population;

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute
- Eric W. Lee, Judicial Watch

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- Eric Ueland, White House Office of Legislative Affairs
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation
- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata

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- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

In searching for records that are responsive to each of the four foregoing requests, please be sure to search the electronic records (including email and text messages) and non-electronic records of each person within your agency who might have any responsive records, and, in addition, please search, in particular, the electronic records and non-electronic records of each of the following persons:

- Adam Korzeniewski, Former Advisor to the Department of Commerce¹⁰
- David Dewhirst, Formerly of Department of Commerce
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Peter B. Davidson, Department of Commerce
- Nathaniel Cogley, Former Advisor to the Department of Commerce¹¹

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f) and rely on two justifications for the request.

The Department of Commerce must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹² exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹³ Both bases are satisfied by this request.

¹⁰ See Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. Times (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html>.

¹¹ See *id.*

¹² 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f)(iii).

¹³ 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

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First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹⁴ in conjunction with the 2020 Census reporting.¹⁵ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for apportioning their legislatures and/or redrawing their electoral districts.¹⁶ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁷ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁸ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁹

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.²⁰ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for

¹⁴ See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹⁵ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

¹⁶ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁷ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁸ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁹ 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f)(iii).

²⁰ 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

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apportioning Congress, and contravene the Census Bureau's current policy.²¹ Modeling shows how significantly the use of citizenship data would affect apportionment.²²

The federal government's actual or alleged activity includes at least the following:²³ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²⁴ Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²⁵ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁶

²¹ See U.S. Const. amend. XIV, § 2 (mandating that "[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state"); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary's findings that "small changes in adjustment methodology would have a large impact upon apportionment" and that any adjustment "might open the door to political tampering in the future."). Efforts to use citizenship data in light of the Census Bureau's policy raises the specter of political tampering.

²² See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 15 C.F.R. § 4.6(f)(iv).

²⁴ See Wang, *supra* note 4.

²⁵ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 15 C.F.R. § 4.6(f)(iv). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁶ 5 U.S.C. § 552(a)(6)(E)(vi) and 15 C.F.R. § 4.6(f)(3).

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Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁷

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure “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 Brennan Center.²⁸ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁹

A. Disclosure Is in the Public Interest

The records requested satisfy the two factors used by the Department of Commerce when determining whether to waive fees: (i) disclosure “is in the public interest”; and (ii) disclosure “is not primarily in the commercial interest of” the Brennan Center.³⁰

The information requested satisfies the Department of Commerce’s four factor “public interest” test: (i) the records requested concern the operations or activities of the government; (ii) disclosure is likely to contribute to an understanding of government operations or activities; (iii) disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject; and (iv) disclosure is likely to contribute significantly to public understanding of government operations or activities.³¹

First, the records requested “concern identifiable operations or activities of the Federal Government”³² because they relate to: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

²⁷ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 15 C.F.R. § 4.6(f)(4).

²⁸ 5 U.S.C. § 552(a)(4)(A)(iii) and 15 C.F.R. § 4.11(l)(1)(i)–(ii).

²⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii)–(iii), (d)(1).

³⁰ 15 C.F.R. § 4.11(l)(1)(i)–(ii).

³¹ See *id.* § 4.11(l)(2)(i)–(iv).

³² 15 C.F.R. § 4.11(l)(2)(i).

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Second, disclosure would be “meaningfully informative about Government operations or activities”³³ because the records requested will provide firsthand evidence about how the federal government plans to use citizenship data in apportionment and which groups or individuals outside the government it has consulted in forming those plans.

Third, disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” because the Department of Commerce “presumes that a representative of the news media,” such as the Brennan Center, “satisfies this consideration.”³⁴ As discussed in more detail below, the Brennan Center qualifies as a representative of the news media because it broadly disseminates information to the public about issues affecting justice and democracy, including the census. Through articles on its frequently visited website, brennancenter.org, and through its widely read research reports,³⁵ the Brennan Center is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”³⁶ Even if the Brennan Center were not a representative of the news media, this third factor would be satisfied because apportionment affects every single person living in the United States. Information about how citizenship data might be used in apportionment will therefore contribute to the understanding of members of the American public whose representational rights are directly impacted by apportionment.

Fourth, the public’s understanding of how the federal government plans to use citizenship data for apportionment purposes will be “significantly enhanced by the disclosure” because, aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data.

Requestors also satisfy the “commercial interest” condition for a fee waiver because disclosure of the records requested “is not primarily in the commercial interest of” the Brennan Center.³⁷ The Brennan Center is a 501(c)(3) non-profit organization and does not seek the requested records for commercial use.³⁸ Instead, the Center plans to analyze, publish, and

³³ *Id.* § 4.11(1)(2)(ii).

³⁴ *Id.* § 4.11(1)(2)(iii).

³⁵ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³⁶ 15 C.F.R. § 4.11(a)(6).

³⁷ *Id.* § 4.11(1)(3).

³⁸ See *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

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publicly disseminate the information requested at no cost. Moreover, the Department of Commerce “ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester[,]” not commercial use.³⁹ As explained above, the Brennan Center is a representative of the news media and has satisfied the public interest standard.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.⁴⁰ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”⁴¹ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”⁴²

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.⁴³ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is an “institution of graduate higher education” falling under the Department of Commerce’s definition of an “[e]ducational institution.”⁴⁴

³⁹ 15 C.F.R. § 4.11(l)(3)(ii).

⁴⁰ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii).

⁴¹ 15 C.F.R. § 4.11(b)(5).

⁴² *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

⁴³ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii).

⁴⁴ 15 C.F.R. § 4.11(b)(4).

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D. The Brennan Center is a Representative of the News Media

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴⁵ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴⁶ Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴⁷ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁸

The Brennan Center regularly publishes news articles and research reports on its website, brennancenter.org, which was visited by 1.9 million people in 2019.⁴⁹ The Center gathers information about the American political system, synthesizes that research, and reports that information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

⁴⁵ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(iii).

⁴⁶ See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴⁷ 5 U.S.C. § 552(a)(4)(A)(ii) and 15 C.F.R. § 4.11(b)(6).

⁴⁸ See *Cause of Action*, 799 F.3d at 1123.

⁴⁹ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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July 1, 2020

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Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome
Mikayla C. Foster
Jared V. Grubow
Christian Ronald
Rieko H. Shepherd
Counsel for Requestors

Exhibit K

Census Bureau

WILMERHALE

August 13, 2020

By Electronic Mail

Sarabeth Rodriguez
FOIA Office
U.S. Census Bureau, Room 3J424
4600 Silver Hill Road
Washington, DC 20233-3700

Re: July 1, 2020 Brennan Center for Justice at NYU School of Law's Submission of Freedom of Information Act Request – DOC-CEN-001602

Dear Ms. Rodriguez,

On July 2, 2020, our office delivered a Freedom of Information Act (“FOIA”) request on behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or the “Requestors”), to the United States Census Bureau via mail to Room 3J235, 4600 Silver Hill Road, Washington, DC 20233 (the “FOIA Request”). On July 21, we received notice that the FOIA Request was “Returned Undelivered” to that address. On July 21, we sent a follow up letter via electronic mail to census.foia@census.gov addressed to Mr. Vernon E. Curry and Ms. Deloris Reed, which reattached the FOIA Request. The follow up letter and FOIA Request (which is dated July 1) are attached hereto as “Exhibit A.”

On August 3, 2020, you denied our request for expedited processing. Although we believe your denial was incorrect at that time, since we submitted the FOIA Request the surrounding political and media environment has substantially shifted and grounds for expedition have only strengthened. As such, and in lieu of an appeal, we submit this letter to renew and ask for reconsideration of our request for expedited processing. This letter underscores the urgency and time sensitivity of our July 1 FOIA Request and supplements the record with additional support for expedition. Please respond to this renewed request for expedition within 10 calendar days, or by the latest August 23, 2020. 5 U.S.C. § 552(a)(6)(E)(ii)(I); 15 C.F.R. § 4.6(f)(4).

Renewed Request for Expedited Processing

As we explained in the July 1 FOIA Request, the Brennan Center requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f). The Census Bureau must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹ exists; or (2) there is an “[a]n urgency to inform the public about an actual or

¹ 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f)(iii).

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alleged Federal Government activity,” and the request is made by an organization “primarily engaged in disseminating information.”² See FOIA Request, Exhibit A, at 5. We write to emphasize that expedited processing should be granted because there is widespread and exceptional media interest surrounding the 2020 Census, specifically as it relates to its uses for reapportionment, and the reporting by news organizations on the 2020 Census has also raised possible questions about the government’s integrity that affect public confidence. Further, as an organization primarily engaged in disseminating information, the Brennan Center urgently needs to inform the public of the information we are requesting.

Since the FOIA Request was filed, the exceptional interest surrounding the 2020 Census and the apportionment process has exploded. On July 21, 2020, President Trump issued a “Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census,” 85 Fed. Reg. 44,679 (July 23, 2020), which resulted in an outpouring of media and news reports.³ Further, at the time we submitted the FOIA Request, the Census Bureau had asked Congress for a four-month extension to report the state-population totals used for reapportionment to the President, extending that deadline to April 31, 2021.⁴ But on August 3, 2020, the Census Bureau reported its plan to “accelerate the completion of data collection and apportionments counts” to meet the statutory deadline of December 31, 2020.⁵ Therefore, the

² 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

³ See, e.g., Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Kay Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics; Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241>; Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083>; Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat>.

⁴ See *Statement on 2020 Census Operational Adjustments Due to COVID-19*, Release No. CB20-RTQ.16, available at <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=10000001175162>

⁵ See *Statement from U.S. Census Bureau Director Steven Dillingham: Delivery a Completed and Accurate 2020 Census Count*, Release No. CB20-RTQ.23, available at <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>.

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Brennan Center's need to receive the agency records responsive to its request, and to receive them as soon as possible, has only become more urgent.

Additionally, the Brennan Center is an organization that is primarily engaged in the dissemination of information, and there is an urgency to inform the public about the issues surrounding the 2020 Census. The Brennan Center's efforts in law and policy are ancillary to its mission to inform and help shape public opinion. As the Brennan Center stated in its initial request, it plans to use the information received from the request to inform the public about the government's plans to use citizenship data in calculating the reapportionment count, and how those plans were developed. With the Census Bureau's deadline approaching even more quickly than when the request was initially submitted, these records are urgently needed to inform the public about how the government's plans may affect their rights.

Widespread Media Interest Raising Questions of Government Integrity

As indicated in our initial request, how the Trump administration plans to use citizenship data to affect reapportionment, in contravention of the U.S. Constitution, raises questions about the government's integrity and is the subject of intense media speculation. Media interest surrounding the government's activities has persisted since the Supreme Court's ruling in June 2019. And since we submitted the July 1 FOIA Request, news articles from a variety of media sources have reported nearly daily updates on the administration's plan to collect citizenship data in conjunction with the 2020 Census, as well as its plan to truncate the timeline for conducting census operations in time to report the state-population totals to the President by December 31, 2020. We expect the influx of media attention to these matters only to continue and expand.

The courts have not specified exactly what threshold must be met for the subject matter of a FOIA request to qualify as a "matter of widespread and exceptional media interest," but, under any standard, that threshold is met here. Agencies entertaining a request for expedited processing on this basis cannot "simply turn a blind eye to the flurry of media attention" surrounding a topic. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 32 (D.D.C. 2004). Even just a "handful of articles" are sufficient to establish the "exceptional media interest" prong if those articles are "published in a variety of publications, and repeatedly reference the ongoing national discussion" about the issues at hand. *Id.*

Each of the articles listed below also indicates that there are possible questions about the Government's integrity that affect public confidence. *See Oversight v. Dep't of Justice*, 292 F. Supp. 3d 501, 505 (D.D.C. 2018) (requiring "the same matter that draws widespread and exceptional media interest [to] be the matter in which there exists possible questions about the government's integrity that affect public confidence"). A possible question about government integrity is raised where the articles indicate possible ethics issues, *id.* at 508 ("The primary way to determine whether such possible questions exist is by examining the state of public coverage

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of the matter at issue, and whether that coverage surfaces possible ethics issues.”), or if the reports suggest the government is acting unconstitutionally, *see Am. Civil Liberties Union*, 321 F. Supp. 2d at 32 (concluding that possible questions of government integrity were raised by articles that reported on whether the issue at bar violated the constitutional rights of the public).

The articles listed below raise issues such as: (1) whether the plans revealed by the President’s July 21st Memo are unconstitutional or otherwise violate federal law; (2) whether the citizenship data the Government plans to use will be accurate and thus legitimate; (3) whether the reapportionment counting plan affects the constitutional right to representation or affects other constitutional rights; and (4) whether the Census count is being improperly politically influenced or is otherwise lacking transparency. *See Citizens for Responsibility and Ethics in Wash. v. Dep’t of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020) (“CREW”) (instructing that “possible questions” does not require proving “wrongdoing by the government”). The public has the right to know that the Census and the government’s use of Census data is lawful, ethical, and fair; any suggestion to the contrary affects public confidence in the government.

The myriad media reports raise possible questions about government integrity, come from a variety of publications, and are all related to the agency records requested in the July 1 FOIA Request. They, at minimum, include the following:

The Government Is Acting Unconstitutionally

- *Editorial: The census counts, so Congress must make sure there’s time to make the count accurate*, HOUS. CHRONICLE (Aug. 5, 2020), <https://www.houstonchronicle.com/opinion/editorials/article/Editorial-The-census-counts-so-Congress-must-15461351.php> (“These immigrants work, pay taxes and contribute to the community. They should be counted. Everyone should. That’s not just a good idea, it’s the law.”).
- Steven Shepard, *Census Bureau will finish count earlier than expected, deliver data to Trump*, POLITICO (Aug. 3, 2020), <https://www.politico.com/news/2020/08/03/census-bureau-data-trump-391146> (reporting that “[t]his latest scheme is nothing more than a partisan attempt at manipulating the census to benefit the president’s allies, but it plainly violates the U.S. Constitution and federal laws, and cannot stand”).
- Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics (describing three lawsuits filed challenging the government’s arbitrary and capricious decision to exclude non-citizens from the census apportionment count).
- Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), [https:// www.nytimes.com/2020/](https://www.nytimes.com/2020/)

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07/21/us/politics/trump-immigrants-census-redistricting.html (noting that “[t]he action directly conflicts with the traditional consensus interpretation of the Constitution”)

- Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083> (reporting on President Trump signing a memorandum “meant to exclude unauthorized immigrants from being taken into account when the government divides up congressional seats, a move that civil-rights groups swiftly vowed to challenge in court” and suggesting that the request may cause the Census Bureau to violate federal law).
- David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002> (reporting on President Trump’s July 21, 2020 memorandum noting that the “memo does not say how the U.S. Census Bureau could distinguish citizens from non-citizens – for any reason – because counters are prohibited from a citizenship question” and noting that Trump’s demand is “blatantly unconstitutional”).
- Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat> (recognizing that the President’s memo is without constitutional authority).
- Mica Rosenberg, Nick Brown & Mimi Dwyer, *Trump Orders Voting Districts to Exclude People in U.S. Illegally*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-usa-trump-migrants-census/trump-aims-to-stop-counting-of-illegal-migrants-in-redrawing-of-us-voting-maps-idUSKCN24M26U> (reporting that “U.S. census experts and lawyers say the action is legally dubious”).
- Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241> (reporting that “Congress has not given discretion [to the President] on what you’re supposed to be counting”).
- Kevin Liptak, Maegan Vazquez, Ariane de Vogue & Catherine E. Shoichet, *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html> (reporting that Trump’s “latest attempt to weaponize the census for an attack on immigrant communities will be found unconstitutional.”).
- Dartunorro Clark, *Trump Signs Memo to Omit Undocumented Immigrants From Census Apportionment Count*, NBC NEWS (July 21, 2020), <https://www.nbcnews.com/politics/white-house/trump-sign-executive-order-aimed-omitting-undocumented->

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immigrants-census-count-n1234228 (quoting advocates statements that “[t]he Constitution requires that everyone in the U.S. be counted in the census. President Trump can’t pick and choose”).

- Jordan Fabian & Greg Stohr, *Trump Bars U.S. Census From Counting Undocumented Immigrants*, BLOOMBERG (July 21, 2020), <https://www.bloomberg.com/news/articles/2020-07-21/trump-order-to-bar-census-from-counting-undocumented-immigrants> (quoting DNC President Tom Perez as saying the President’s order is “an unconstitutional order that has no purpose other than to silence and disempower Latino voices and communities of color”).
- Sam Levine, *Trump Orders Undocumented Immigrants Excluded From Key Census Count*, GUARDIAN (July 21, 2020), <https://www.theguardian.com/us-news/2020/jul/21/trump-executive-order-census-undocumented-immigrants> (“The Trump administration appears to be on shaky legal ground – the US constitution requires seats in Congress to be apportioned based on the ‘whole number of persons’ counted in each state during each decennial census.”).
- Matt Stieb, *Trump Tries Last-Ditch Order to Keep Undocumented Immigrants Off Census*, NEW YORK (July 21, 2020), <https://nymag.com/intelligencer/2020/07/trump-tries-last-ditch-order-to-keep-undocumented-off-census.html> (reporting that it is likely that President Trump’s order will be overturned because “the Constitution does not determine between citizens and noncitizens”).
- Nicole Narea, *Trump Is Using the Census to Undermine Immigrants’ Political Power*, VOX (July 21, 2020), <https://www.vox.com/policy-and-politics/2020/7/21/21328714/trump-executive-order-immigration-census-2020-redistricting> (explaining that the memorandum “could also indirectly discourage immigrants who have yet to respond to the census from doing so,” and that “legal experts say that it clearly flouts the US Constitution, which requires that every person in the US — not just every citizen — be counted in the census.”).
- Trevor Hughes, *Trump, Census Bureau Collect Driver’s License Data to Check Citizenship Status of Americans*, USA TODAY (July 16, 2020), <https://www.usatoday.com/story/news/nation/2020/07/16/trump-seeks-drivers-license-data-iowa-sc-check-citizenship/5445492002/> (quoting the ACLU that the sharing of license data pursuant to Executive Order 13880 “appears to be part of a scheme motivated by an unconstitutional discriminatory purpose to dilute the political power of communities of color.”).
- John Nichols, *Trump Wants to Use ‘Citizenship Data’ to Gerrymander Democracy*, THE NATION (July 13, 2019), <https://www.thenation.com/article/archive/trump-census-citizenship-data-gerrymander-democracy> (reporting that the use of citizenship data, “is a

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threat to the basic premises of representative democracy as they have historically been understood”).

- Tess Berenson, *President Trump Backs Down on Adding Citizenship Question to Census*, TIME (July 11, 2019), <https://time.com/5624485/trump-census-citizenship-question-pivot/> (quoting Thomas Wolf, counsel with the Brennan Center, as stating “The president doesn’t have the ability to unilaterally alter the census . . . The Trump administration is in a bind that it’s not going to be able to escape on the substance of the justification for a citizenship question.”).

The Census Count Is Possibly Inaccurate and Possibly Illegitimate

- *What risks does ending the census count early pose?*, PBS (Aug. 9, 2020), <https://www.pbs.org/newshour/show/what-risks-does-ending-the-census-count-early-pose> (noting that the decision to shorten the Census Bureau’s operations mere weeks after the memorandum calling for unauthorized immigrants to be excluded from the census numbers used to reapportion seats in Congress is “causing a lot of confusion” and asking “are there going to be enough indicators and metrics for the Census Bureau as well as outside researchers to really make that assessment of how good is the 2020 census? *How good are these results?*”).
- *Businesses to Help Wednesday as Census ends Sept. 30*, DAILY MOUNTAIN EAGLE, (Aug. 8, 2020), <http://www.mountaineagle.com/stories/businesses-to-help-wednesday-as-census-ends-sept-30,27659> (noting that Census experts and civil rights activists worry the sped-up deadlines could affect the thoroughness of the count, which determines how many congressional districts each state gets).
- Michael Wines, *At the Census Bureau, a Technical Memo Raises Alarms Over Politics*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/us/2020-census-undocumented-immigrants.html> (reporting that an internal Census Bureau memo issued on August 3, 2020 ordered an internal task force to explore statistical methods of compiling an accurate estimate of noncitizens in an effort to carry out President Trump’s July mandate to exclude undocumented residents from the apportionment count).
- Vania Patino *Census count finishing early may cause undercount in some TX Panhandle counties*, KLTN (Aug. 6, 2020), <https://www.kltv.com/2020/08/07/census-count-finishing-early-may-cause-undercount-some-tx-panhandle-counties/> (reporting that the Census Bureau’s new deadline “seems impossible” and that it is essential for the numbers to be correct for the representation to be correct).
- Michael Wines & Richard Fausset, *With Census Count Finishing Early, Fears of a Skewed Tally Rise*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html> (quoting former Census Bureau directors warning that an earlier deadline would “result in seriously incomplete enumerations in many areas across our country.”).

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- *Census to Finish Count Month Early*, WBUR (Aug. 4, 2020), <https://www.wbur.org/hereandnow/2020/08/04/census-count-cut-short> (noting that many people fear that the Census's Bureau's shortened operations period will reduce the accuracy of the population count).
- Hansi Lo Wang, *Census Cuts All Counting Efforts Short by a Month*, NPR (Aug. 3, 2020), <https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30> (“These last-minute changes to the constitutionally mandated count of every person living in the U.S. threaten the accuracy of population numbers used to determine the distribution of political representation and federal funding for the next decade.”).
- Dudley L. Poston, Jr. and Teresa A. Sullivan, *Excluding Undocumented Immigrants from the 2020 U.S. House Apportionment*, UVA CTR. FOR POLITICS (July 30, 2020), <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment> (“[I]t is not clear whether the Secretary of Commerce could produce acceptable numbers of undocumented residents according to the timetable the new memorandum requires.”).
- Adam Shaw & John Roberts, *Trump Signs Order to Prevent Illegal Immigrants from Being Counted in Redrawing Of Voting Districts*, FOX NEWS (July 21, 2020), <https://www.foxnews.com/politics/trump-to-sign-order-illegal-immigrants-voting-districts> (noting that it is “not clear how the administration would determine who was in the country illegally” for purposes of determining reapportionment).
- Brett Samuels & Rafael Bernal, *Trump Aims To Bar Undocumented Immigrants From Counting Toward House Representation*, HILL (July 21, 2020), <https://thehill.com/latino/508314-trump-aims-to-bar-undocumented-immigrants-from-counting-toward-house-representation> (suggesting that the administration may be using “questionable social science data techniques” including sampling, which was struck down by the Supreme Court in 1999).
- Chris Sommerfeldt, *Trump Moves to Exclude Undocumented Immigrants From Census Data on Voting Districts*, N.Y. DAILY NEWS (July 21, 2020), <https://www.nydailynews.com/news/politics/ny-trump-memo-immigrants-voting-census-20200721-5rexysrdbbd3vp7gqq2seu4of4-story.html> (noting that “it’s unclear how the government would be able to determine whether a resident is undocumented, since the Supreme Court blocked the Trump administration last year from adding a citizenship question to the 2020 census.”).

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- Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdff1af38_story.html (noting that the administrations appointment of two “high-level political appointees to the Census Bureau ... rais[ed] concern that the new hires could attempt to influence the count”).
- Colin A. Young, *Trump Seeks to Squeeze Immigrants Out of Apportionment*, WWLP-22NEWS (July 21, 2020), <https://www.wwlp.com/news/state-politics/trump-seeks-to-squeeze-immigrants-out-of-apportionment/> (reporting that “[t]he Census, throughout our history, has always been an accurate, even count. That’s what it’s been irrespective of which party controlled Congress, controlled the presidency, and [President Trump] clearly has no such qualms about accuracy or honesty.”).
- Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html> (reporting that veteran Census Bureau officials are “worried that the new appointees will seek to skew the 2020 census totals in a similarly inaccurate way, accomplishing what the battle over the citizenship question failed to achieve.”).
- Hansi Lo Wang, *Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen> (“Many voting rights advocates, however, are skeptical about the accuracy of data that would be generated from historical records that often contain out-of-date information, especially about whether a person is currently a U.S. citizen.”).
- Aaron Boyd, *How Census is Building a Citizenship Database Covering Everyone Living in the U.S.*, NEXTGOV (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275/> (quoting a statement from the Census Bureau’s website about citizenship data stating “[w]e are still receiving and analyzing data from external sources, including federal and state administrative records, and require additional time for evaluation”).
- Tara Bahrapour, *Census Bureau’s Request for Citizenship Data From DMVs Raises Privacy, Accuracy Concerns*, WASH. POST (Oct. 17, 2019), https://www.washingtonpost.com/local/social-issues/census-bureaus-request-for-citizenship-data-from-dmvs-raises-privacy-accuracy-concerns/2019/10/17/aa8771f2-f114-11e9-89eb-ec56cd414732_story.html (reporting that “DMV records [requested by the Executive Order] are not necessarily updated when a person naturalizes, and said relying on such data would result in undercounts of people who became citizens after getting driver’s

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licenses or state IDs — a group that includes a higher proportion of minorities than the general population.”).

- Nicole Narea, *Trump is Still Trying to Collect Citizenship Data For Redistricting*, VOX (Oct. 17, 2019), <https://www.vox.com/policy-and-politics/2019/10/17/20918989/trump-2020-census-citizenship-data-redistricting-drivers-license> (quoting Dale Ho, director of the ACLU’s Voting Rights Project, as saying that state’s Department of Motor Vehicles data is concerning because it is “highly unreliable due to poor database protocols and stale citizenship data”).
- Chris Dunn, *The Long Fight to Protect the 2020 Census from Trump*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/opinion/long-fight-protect-2020-census-trump> (“A worrisome threat to the legitimacy of this process lies with the step where the President is to certify census results to Congress.”).

An Inaccurate Reapportionment Affects Persons’ Rights

- Doug Thompson, *Time crunch has census-takers in Arkansas racing the clock*, (Aug. 9, 2020), ARK. DEMOCRAT-GAZETTE, <https://www.arkansasonline.com/news/2020/aug/09/census-count-time-cut-short-advocates-say/?latest> (affecting rights because “[i]f a county in Arkansas has a lower-than-accurate census count, it loses out on representation”).
- Megan Tomasic, *Earlier census deadline could cause W.Pa. officials to accelerate counts*, TRIB TOTAL MEDIA (July 31, 2020), <https://triblive.com/local/regional/local-leaders-respond-to-date-change-for-in-person-census-count-collection/> (estimating that the decision to cut short in-person counting efforts could result in “catastrophic outcomes for cities and towns across the country who rely on federal funding and congressional apportionment”).
- Katie Rogers, Adam Liptak, Michael Crowley & Michael Wines, *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html> (reporting on President Trump’s July 11 Rose Garden announcement that the administration’s goal is to obtain data on citizenship to eliminate noncitizens from the population bases used to draw political boundaries).
- Dan Mangan & Tucker Higgins, *Trump Abandons Fight to Put Citizenship Question on Census, Says He Can Get Data From Existing Records*, CNBC (July 11, 2019), <https://www.cnn.com/2019/07/11/trump-abandons-fight-to-put-citizenship-question-on-census.html> (quoting Dale Ho, director at the ACLU, as stating President Trump “lost in the Supreme Court, which saw through his lie about needing the question for the Voting Rights Act . . . It is clear he simply wanted to sow fear in immigrant communities and turbocharge Republican gerrymandering efforts by diluting the political influence of Latino communities.”).

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- Jeff Mason & David Shepardson, *Trump Drops Census Citizenship Question, Vows to Get Data From Government*, REUTERS (July 11, 2019), <https://www.reuters.com/article/us-usa-census/trump-drops-census-citizenship-question-vows-to-get-data-from-government-idUSKCN1U61D9> (quoting Michael Waldman, president of the Brennan Center, as saying that the Brennan Center would challenge “any administration move to violate the clear and strong rules protecting the privacy of everyone’s responses, including the rules barring the use of personal census data to conduct law or immigration enforcement activities.”).

Questions and Concerns That the Census Is Being Improperly Politically Influenced

- Hansi Lo Wang, *‘Not Enough Time’: Census Workers Fear Rushing Count Could Botch Results*, (Aug. 11, 2020), <https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results> (quoting a Census field worker as saying about the administration’s plans “It does not feel like we have the same mission in mind. We’re trying to get a complete count. I’m not sure everyone on the team has the same mission.” Also quoting a Senator as saying, “I believe that this deviation in schedule is driven not by expert opinions of career Census Bureau employees but by external pressure from the White House and the Department of Commerce for perceived political gain.”).
- Hansi Lo Wang, *Census Door Knocking Cut a Month Short Amid Pressure to Finish Count*, NPR (July 30, 2020), <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> (“The director of the Census Bureau testified that he first learned about Trump’s plans to attempt to exclude unauthorized immigrants from the census numbers used to reapportion seats in Congress not from any internal discussions, but from a news report ‘late on a Friday’ that said ‘such a directive may be coming down.’”).
- Michael Wines, *New Census Worry: A Rushed Count Could Mean a Botched One*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/us/trump-census.html> (reporting that despite admitting that “meeting that deadline is impossible,” “the White House declined to address questions about its census plans. Responding to a reporter’s questions, the Census Bureau issued a statement on Monday that neither confirmed nor denied an effort to hasten the completion of the count and the delivery of reapportionment figures.”).
- Tara Bahrapour, *Lawmakers, inspector general demand answers on Census Bureau political appointees*, WASH. POST (July 16, 2020), https://www.washingtonpost.com/local/social-issues/lawmakers-inspector-general-demand-answers-on-census-bureau-political-appointees/2020/07/16/6c355046-c656-11ea-8ffe-372be8d82298_story.html (describing several concerns over the addition of two partisan appointees to the Census

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Bureau staff because the move could “politicize the decennial census, which is used to determine congressional apportionment”).

- Nikita Lalwani & Rachel Brown, *Donald Trump’s Efforts to Distort the Census Have Started Back Up*, SLATE (July 17, 2020), <https://slate.com/news-and-politics/2020/07/donald-trump-census-citizenship-question-executive-order-scotus.html> (“The American Statistical Association decried the news [of two new partisan appointees] as creating ‘the perception—if not reality—of improper political influence.’”).
- Adrian Sainz, *Commerce Department IG Seeks Info on 2 Census Hirings*, WASH. POST (July 8, 2020), https://www.washingtonpost.com/national/commerce-department-ig-seeks-info-on-2-census-hirings/2020/07/08/c5579c3a-c14f-11ea-8908-68a2b9eae9e0_story.html (citing Thomas Wolf, a counsel with the Brennan Center, that the two new Census Bureau employees appointed by the Trump administration raise concerns that the administration may try to violate longstanding protections ensuring that data is kept confidential and secure).
- Michael Wines, *Knocked Off Track by Coronavirus, Census Announces Delay in 2020 Count*, N.Y. TIMES (Apr. 13, 2020), <https://www.nytimes.com/2020/04/13/us/census-coronavirus-delay.html> (“[A] number of experts [] said that the aura of secrecy surrounding this census, in sharp contrast to previous ones, limited support for the count and raised questions about what, if anything, was being concealed.”).
- Jeffrey Mervis, *Why the U.S. Census Bureau Could Have Trouble Complying With Trump’s Order to Count Citizens*, SCIENCE (Sept. 16, 2019), <https://www.sciencemag.org/news/2019/09/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens> (reporting that researchers fear complying with President Trump’s Executive Order could “tarnish” the Census Bureau’s “stellar reputation for nonpartisanship”).
- Hansi Lo Wang, *Trump Wants Citizenship Data Released But States Haven’t Asked Census For That*, NPR (Sept. 11, 2019), <https://www.npr.org/2019/09/11/759510775/trump-wants-citizenship-data-released-but-states-havent-asked-census-for-it> (reporting that Thomas Hofeller, a GOP redistricting strategist, concluded that detailed citizenship information could allow for redrawing of voting districts that would be “advantageous to Republicans and Non-Hispanic Whites,” but that the Trump Administration argues Hofeller’s study played little role in advocating for a citizenship question).
- Hansi Lo Wang, *Do Trump Officials Plan to Break Centuries of Precedent in Divvying Up Congress?*, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress> (reporting

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that the Census Bureau failed to provide clear answers as to whether citizenship would be used in the 2020 Census and factor into apportionment).

The abundance of reporting from an array of media outlets listed above overwhelmingly establishes that the July 1 FOIA Request satisfies the exceptional media interest requirement because each article raises a possible question about government integrity that affects public confidence.

For the reasons set forth above, the Brennan Center has established, and reiterates here, that there is widespread and exceptional media interest surrounding the topics in its July 1 FOIA Request. Therefore, expedited processing must be granted.

The Brennan Center Is Primarily Engaged in Disseminating Information

The Brennan Center should be granted expedited processing as it is an organization “primarily engaged in disseminating information,” and there is “urgency to inform the public” about the issues their request identifies. 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

In *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, the court concluded that CREW⁶ was primarily engaged in disseminating information based on its assertion that its “primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials.” *CREW*, 436 F. Supp. 3d at 360–61. Similarly, the July 1 FOIA Request specifies that the Brennan Center is primarily a “cutting-edge communications hub, shaping opinion by taking our message directly to the press and public,” *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed August 13, 2020). The Brennan Center works first to inform the public of injustice in society and then uses its expertise to advance its policies. The legal and advocacy work the Brennan Center does has the purpose of creating a public record of important issues, all of which supports the notion that the Center is primarily engaged in disseminating information.

Following President Trump issuing the July 21 Memorandum, a multitude of lawsuits were filed challenging the constitutionality of the administration’s plan. As the July 1 Request specified, the Brennan Center will use the agency records received through the request to “explain to the public how citizenship data may be used to calculate the apportionment.” *See*

⁶ CREW’s website indicates that they “use[] aggressive legal action, in-depth research, and bold communications to reduce the influence of money in politics and help foster a government that is ethical and accountable.” *Who We Are, About Us*, CREW, <https://www.citizensforethics.org/who-we-are> (last accessed August 10, 2020).

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FOIA Request, Exhibit A, at 7. Access to the requested documents is essential for the public to assess the Administration's plans for using citizenship for the 2020 Census count.

Additionally, the Brennan Center has an online library with thousands of publications, articles, and reports that are publicly available,⁷ including 75 that are dedicated solely to the census such as the following:

- Thomas Wolf, Kelly Percival, and Brianna Cea, *Getting the Count Right: Key Context for the 2020 Census*, Brennan Ctr. (March 31, 2020), <https://www.brennancenter.org/sites/default/files/2020-03/CensusPrimer.pdf>.
- Kelly Percival, *Strong Confidentiality Laws Protect All Data the Census Bureau Collects*, Brennan Ctr. (Dec. 5, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/strong-confidentiality-laws-protect-all-data-census-bureau-collects>.
- Kelly Percival, *Trump Administration Abandons Citizenship Question*, Brennan Ctr. (July 12, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/trump-administration-abandons-citizenship-question>.
- Kelly Percival & Brianna Cea, *Annotated Guide to the Amicus Briefs in the Supreme Court's Citizenship Question Case*, Brennan Ctr. (Apr. 11, 2019), <https://www.brennancenter.org/our-work/court-cases/annotated-guide-amicus-briefs-supreme-courts-citizenship-question-case>.
- Thomas Wolf & Brianna Cea, *A Critical History of the U.S. Census & Citizenship Questions*, Brennan Ctr. (Apr. 2, 2019), <https://www.brennancenter.org/our-work/research-reports/critical-history-us-census-citizenship-questions>.
- Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.
- Brianna Cea, *Potential Shifts in Political Power After the 2020 Census*, Brennan Ctr. (March 27, 2018), <https://www.brennancenter.org/our-work/research-reports/potential-shifts-political-power-after-2020-census>.

For the foregoing reasons, we request that you promptly grant our expedited processing request and produce agency records responsive to the July 1 FOIA Request. Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

⁷ *Library: A Fair & Accurate Census*, Brennan Ctr., <https://www.brennancenter.org/library/?issue=22&subissue=60&>.

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Jared V. Grubow
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Respectfully,

/s/ Patrick Carome

Patrick Carome

Caitlin Monahan

Mikayla C. Foster

Jared V. Grubow

Rieko H. Shepherd

Counsel for Requestors

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CERTIFICATION

I hereby certify, on behalf of the Brennan Center and pursuant to 5 U.S.C. § 552(6)(E)(vi), that the content of this letter, as well as the statements supporting the Brennan Center's request for expedition set forth in the original FOIA Request, are true and correct to the best of my and the Brennan Center's knowledge and belief.

/s/ Patrick Carome

Patrick Carome

Exhibit A

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July 21, 2020

By Electronic Mail

Vernon E. Curry, PMP, CIPP/G
U.S. Census Bureau, Room 3J235
4600 Silver Hill Road
Washington, DC 20233-3700

Cc: Deloris Reed
U.S. Census Bureau, Room 3J235
4600 Silver Hill Road
Washington, DC 20233-3700

Re: July 1, 2020 Brennan Center for Justice at NYU School of Law's Submission of Freedom of Information Act Request

Dear Mr. Curry and Ms. Reed:

On July 1, 2020, our office delivered a Freedom of Information Act ("FOIA") request on behalf of our client, the Brennan Center for Justice at NYU School of Law (the "Requestors"). The July 1, 2020 FOIA Request is attached. As the request indicates, the letter was mailed to the Census Bureau's FOIA Office located at 4600 Silver Hill Road, Washington, DC 20233-3700. On July 21, 2020, we received notice that the letter was "Returned Undelivered."

We spoke with Ms. Reed, at approximately 1:14 p.m. on July 21, 2020 who confirmed that we mailed the request to the accurate address and was unsure why it was returned. Ms. Reed then directed us to resend the request by email at this address, census.foia@census.gov, and said we would receive a confirmation. We are following these instructions and resubmitting the request in this manner.

Please note that this is a time sensitive request and we have asked for expedited processing (see July 1, 2020 FOIA Request attached). Since our initial request was returned, media interest surrounding the census and the President's involvement has continued to

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escalate.¹ Therefore, we request that you please provide special expedited processing, backdating the request to July 1, 2020, on account of the error in the delivery. We are sensitive to the delays and unusual working circumstances caused by the coronavirus pandemic, but point out that your website does not indicate you were not accepting any requests by mail. Your website states:

Guest users are welcome to use the FOIAonline system to submit requests, search for previously released records, and generate reports, but the tracking and communications features will not be available.

Requests can also be submitted to the Census Bureau by paper copy (Privacy Act statement.) When making a request, please include a mailing address so we may contact you if necessary. Keep a copy of your request; you may need to refer to it for further correspondence with the agency.²

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

¹ As we indicated in our initial request, how the Trump administration plans to use citizenship data to affect reapportionment, in contravention of the Constitution and Census Bureau policy, raises questions about the government's integrity and is the subject of intense media speculation. *See, e.g.*, Andrew Restuccia, *Trump Moves to Exclude Those in U.S. Illegally From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083?mod=searchresults&page=1&pos=1>; David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002>; Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress' Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat>; Mica Rosenberg, Nick Brown & Mimi Dwyer, *Trump Orders Voting Districts to Exclude People in U.S. Illegally*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-usa-trump-migrants-census/trump-aims-to-stop-counting-of-illegal-migrants-in-redrawing-of-us-voting-maps-idUSKCN24M26U>; Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdff1af38_story.html; Anita Kumar, *Trump Tries to Restrict Undocumented Immigrants from Census Count*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241>; Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html>; Maya King, *Census Bureau Spends Millions on Ads Combating Citizenship Question Scare*, POLITICO (Feb. 18, 2020), <https://www.politico.com/news/2020/02/18/census-bureau-ads-citizenship-question-115718>; Chris Dunn, *The Long Fight to Protect the 2020 Census from Trump*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/opinion/long-fight-protect-2020-census-trump>; Jake Sherman (@JakeSherman), TWITTER (July 17, 2020), <https://twitter.com/JakeSherman/status/1284172980050898945>; Leah Litman (@LeahLitman), TWITTER (July 17, 2020), <https://twitter.com/leahlitman/status/1284172866901159937?s=21>; Joshua A. Geltzer (@jgeltzer), TWITTER (July 17, 2020), <https://twitter.com/jgeltzer/status/1284181260038963201?s=21>.

² *How do I File a FOIA Request*, CENSUS BUREAU, https://www.census.gov/about/policies/foia/foia-requests/how_to_file_a_foia_request.html (last visited July 21, 2020).

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Respectfully,

/s/ Patrick Carome
Patrick Carome
Mikayla C. Foster
Jared V. Grubow
Rieko H. Shepherd
Counsel for Requestors

WILMERHALE

July 1, 2020

By Mail

ATTN: FOIA Office
U.S. Census Bureau, Room 3J235
4600 Silver Hill Road
Washington, DC 20233-3700

Re: Freedom of Information Act Request

Dear Sir or Madam:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Census Bureau, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

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Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:
 - calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau's policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau's policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
 - 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
 - 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau and Former Advisor to the Department of Commerce
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute
- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau and Former Advisor to the Department of Commerce
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation
- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata

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- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

In searching for records that are responsive to each of the four foregoing requests, please be sure to search the electronic records (including email and text messages) and non-electronic records of each person within your agency who might have any responsive records, and, in addition, please search, in particular, the electronic records and non-electronic records of each of the following persons:

- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau and
- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f) and rely on two justifications for the request.

The Department of Commerce must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f)(iii).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

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collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 15 C.F.R. § 4.6(f)(iii).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

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apportioning Congress, and contravene the Census Bureau's current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that "[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state"); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary's findings that "small changes in adjustment methodology would have a large impact upon apportionment" and that any adjustment "might open the door to political tampering in the future."). Efforts to use citizenship data in light of the Census Bureau's policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 15 C.F.R. § 4.6(f)(iv).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 15 C.F.R. § 4.6(f)(iv). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 15 C.F.R. § 4.6(f)(3).

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Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure “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 Brennan Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. Disclosure Is in the Public Interest

The records requested satisfy the two factors used by the Department of Commerce when determining whether to waive fees: (i) disclosure “is in the public interest”; and (ii) disclosure “is not primarily in the commercial interest of” the Brennan Center.²⁸

The information requested satisfies the Department of Commerce’s four factor “public interest” test: (i) the records requested concern the operations or activities of the government; (ii) disclosure is likely to contribute to an understanding of government operations or activities; (iii) disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject; and (iv) disclosure is likely to contribute significantly to public understanding of government operations or activities.²⁹

First, the records requested “concern identifiable operations or activities of the Federal Government”³⁰ because they relate to: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 15 C.F.R. § 4.6(f)(4).

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 15 C.F.R. § 4.11(l)(1)(i)–(ii).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii)–(iii), (d)(1).

²⁸ 15 C.F.R. § 4.11(l)(1)(i)–(ii).

²⁹ See *id.* § 4.11(l)(2)(i)–(iv).

³⁰ 15 C.F.R. § 4.11(l)(2)(i).

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Second, disclosure would be “meaningfully informative about Government operations or activities”³¹ because the records requested will provide firsthand evidence about how the federal government plans to use citizenship data in apportionment and which groups or individuals outside the government it has consulted in forming those plans.

Third, disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject,” because the Department of Commerce “presumes that a representative of the news media,” such as the Brennan Center, “satisfies this consideration.”³² As discussed in more detail below, the Brennan Center qualifies as a representative of the news media because it broadly disseminates information to the public about issues affecting justice and democracy, including the census. Through articles on its frequently visited website, brennancenter.org, and through its widely read research reports,³³ the Brennan Center is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”³⁴ Even if the Brennan Center were not a representative of the news media, this third factor would be satisfied because apportionment affects every single person living in the United States. Information about how citizenship data might be used in apportionment will therefore contribute to the understanding of members of the American public whose representational rights are directly impacted by apportionment.

Fourth, the public’s understanding of how the federal government plans to use citizenship data for apportionment purposes will be “significantly enhanced by the disclosure” because, aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data.

Requestors also satisfy the “commercial interest” condition for a fee waiver because disclosure of the records requested “is not primarily in the commercial interest of” the Brennan Center.³⁵ The Brennan Center is a 501(c)(3) non-profit organization and does not seek the requested records for commercial use.³⁶ Instead, the Center plans to analyze, publish, and

³¹ *Id.* § 4.11(1)(2)(ii).

³² *Id.* § 4.11(1)(2)(iii).

³³ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³⁴ 15 C.F.R. § 4.11(a)(6).

³⁵ *Id.* § 4.11(1)(3).

³⁶ See *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

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publicly disseminate the information requested at no cost. Moreover, the Department of Commerce “ordinarily shall presume that if a news media requester has satisfied the public interest standard, the public interest is the primary interest served by disclosure to that requester[,]” not commercial use.³⁷ As explained above, the Brennan Center is a representative of the news media and has satisfied the public interest standard.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁸ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁹ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”⁴⁰

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.⁴¹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is an “institution of graduate higher education” falling under the Department of Commerce’s definition of an “[e]ducational institution.”⁴²

³⁷ 15 C.F.R. § 4.11(l)(3)(ii).

³⁸ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii).

³⁹ 15 C.F.R. § 4.11(b)(5).

⁴⁰ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(1)(ii).

⁴² 15 C.F.R. § 4.11(b)(4).

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D. The Brennan Center is a Representative of the News Media

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴³ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴⁴ Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴⁵ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁶

The Brennan Center regularly publishes news articles and research reports on its website, brennancenter.org, which was visited by 1.9 million people in 2019.⁴⁷ The Center gathers information about the American political system, synthesizes that research, and reports that information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

⁴³ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 15 C.F.R. § 4.11(c)(iii).

⁴⁴ See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴⁵ 5 U.S.C. § 552(a)(4)(A)(ii) and 15 C.F.R. § 4.11(b)(6).

⁴⁶ See *Cause of Action*, 799 F.3d at 1123.

⁴⁷ See *2019 Annual Report 15*, Brennan Ctr, (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome

Mikayla C. Foster

Jared V. Grubow

Christian Ronald

Rieko H. Shepherd

Counsel for Requestors

Exhibit L

Civil Rights Division

Department of Justice

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August 13, 2020

By Electronic Mail

United States Department of Justice
Civil Rights Division

FOIA/PA Branch
Civil Rights Division
BICN, Room 3234
950 Pennsylvania Ave, NW
Washington DC 20530

Re: Brennan Center for Justice at NYU School of Law's Submission of Freedom of Information Act Request – FOIA/PA No. 20-00199-F

Dear Sir or Madam:

On July 1, 2020, our office delivered a Freedom of Information Act (“FOIA”) request on behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or the “Requestors”) to the U.S. Department of Justice Civil Rights Division via electronic mail to CRT.FOIArequests@usdoj.gov (the “FOIA Request”). The FOIA Request is attached hereto as “Exhibit A.”

We have not received a decision regarding our expedited processing request within 10 calendar days as required by 5 U.S.C. § 552(a)(6)(E)(ii)(I) or a response to the FOIA Request itself within 20 working days as required by 5 U.S.C. § 552(a)(6)(A)(i).

We submit this letter to follow up on the FOIA Request, to underscore its urgency and time sensitivity, and to supplement the record with respect to the Brennan Center’s entitlement to expedited processing. The need for you to respond promptly to our request for expedited processing, as elaborated herein, is especially critical.

Renewed Request for Expedited Processing

As we explained in the July 1 FOIA Request, the Brennan Center requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e). The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹ exists; or (2) “[a]n urgency to inform the public about an actual or

¹ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

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alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”² Exhibit A, at 5. As we have not received a response, we write to emphasize that expedited processing should be granted because there is widespread and exceptional media interest surrounding the 2020 Census, specifically as it relates to its uses for reapportionment, and the reporting by news organizations on the 2020 Census has also raised possible questions about the government’s integrity that affect public confidence. Further, as an organization primarily engaged in disseminating information, the Brennan Center urgently needs to inform the public of the information we are requesting.

Since the FOIA Request was filed, the exceptional interest surrounding the 2020 Census and the apportionment process has exploded. On July 21, 2020, President Trump issued a “Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census,” 85 Fed. Reg. 44,679 (July 23, 2020), which resulted in an outpouring of media and news reports.³ Further, at the time we submitted the FOIA Request, the Census Bureau had asked Congress for a four-month extension to report the state-population totals used for reapportionment to the President, extending that deadline to April 31, 2021.⁴ But on August 3, 2020, the Census Bureau reported its plan to “accelerate the completion of data collection and apportionments counts” to meet the statutory deadline of December 31, 2020.⁵ Therefore, the

² 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

³ See, e.g., Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics; Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241>; Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083>; Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat>.

⁴ See *Statement on 2020 Census Operational Adjustments Due to COVID-19*, Release No. CB20-RTQ.16, available at <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=10000001175162>

⁵ See *Statement from U.S. Census Bureau Director Steven Dillingham: Delivery a Completed and Accurate 2020 Census Count*, Release No. CB20-RTQ.23, available at <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>.

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Brennan Center's need to receive the agency records responsive to its request, and to receive them as soon as possible, has only become more urgent.

Additionally, the Brennan Center is an organization that is primarily engaged in the dissemination of information, and there is an urgency to inform the public about the issues surrounding the 2020 Census. The Brennan Center's efforts in law and policy are ancillary to its mission to inform and help shape public opinion. As the Brennan Center stated in its initial request, it plans to use the information received from the request to inform the public about the government's plans to use citizenship data in calculating the reapportionment count, and how those plans were developed. With the Census Bureau's deadline approaching even more quickly than when the request was initially submitted, these records are urgently needed to inform the public about how the government's plans may affect their rights.

Widespread Media Interest Raising Questions of Government Integrity

As indicated in our initial request, how the Trump administration plans to use citizenship data to affect reapportionment, in contravention of the U.S. Constitution, raises questions about the government's integrity and is the subject of intense media speculation. Media interest surrounding the government's activities has persisted since the Supreme Court's ruling in June 2019. And since we submitted the July 1 FOIA Request, news articles from a variety of media sources have reported nearly daily updates on the administration's plan to collect citizenship data in conjunction with the 2020 Census, as well as its plan to truncate the timeline for conducting census operations in time to report the state-population totals to the President by December 31, 2020. We expect the influx of media attention to these matters only to continue and expand.

The courts have not specified exactly what threshold must be met for the subject matter of a FOIA request to qualify as a "matter of widespread and exceptional media interest," but, under any standard, that threshold is met here. Agencies entertaining a request for expedited processing on this basis cannot "simply turn a blind eye to the flurry of media attention" surrounding a topic. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 32 (D.D.C. 2004). Even just a "handful of articles" are sufficient to establish the "exceptional media interest" prong if those articles are "published in a variety of publications, and repeatedly reference the ongoing national discussion" about the issues at hand. *Id.*

Each of the articles listed below also indicates that there are possible questions about the Government's integrity that affect public confidence. *See Oversight v. Dep't of Justice*, 292 F. Supp. 3d 501, 505 (D.D.C. 2018) (requiring "the same matter that draws widespread and exceptional media interest [to] be the matter in which there exists possible questions about the government's integrity that affect public confidence"). A possible question about government integrity is raised where the articles indicate possible ethics issues, *id.* at 508 ("The primary way to determine whether such possible questions exist is by examining the state of public coverage

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of the matter at issue, and whether that coverage surfaces possible ethics issues.”), or if the reports suggest the government is acting unconstitutionally, *see Am. Civil Liberties Union*, 321 F. Supp. 2d at 32 (concluding that possible questions of government integrity were raised by articles that reported on whether the issue at bar violated the constitutional rights of the public).

The articles listed below raise issues such as: (1) whether the plans revealed by the President’s July 21st Memo are unconstitutional or otherwise violate federal law; (2) whether the citizenship data the Government plans to use will be accurate and thus legitimate; (3) whether the reapportionment counting plan affects the constitutional right to representation or affects other constitutional rights; and (4) whether the Census count is being improperly politically influenced or is otherwise lacking transparency. *See Citizens for Responsibility and Ethics in Wash. v. Dep’t of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020) (“CREW”) (instructing that “possible questions” does not require proving “wrongdoing by the government”). The public has the right to know that the Census and the government’s use of Census data is lawful, ethical, and fair; any suggestion to the contrary affects public confidence in the government.

The myriad media reports raise possible questions about government integrity, come from a variety of publications, and are all related to the agency records requested in the July 1 FOIA Request. They, at minimum, include the following:

The Government Is Acting Unconstitutionally

- *Editorial: The census counts, so Congress must make sure there’s time to make the count accurate*, HOUS. CHRONICLE (Aug. 5, 2020), <https://www.houstonchronicle.com/opinion/editorials/article/Editorial-The-census-counts-so-Congress-must-15461351.php> (“These immigrants work, pay taxes and contribute to the community. They should be counted. Everyone should. That’s not just a good idea, it’s the law.”).
- Steven Shepard, *Census Bureau will finish count earlier than expected, deliver data to Trump*, POLITICO (Aug. 3, 2020), <https://www.politico.com/news/2020/08/03/census-bureau-data-trump-391146> (reporting that “[t]his latest scheme is nothing more than a partisan attempt at manipulating the census to benefit the president’s allies, but it plainly violates the U.S. Constitution and federal laws, and cannot stand”).
- Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics (describing three lawsuits filed challenging the government’s arbitrary and capricious decision to exclude non-citizens from the census apportionment count).
- Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/>

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07/21/us/politics/trump-immigrants-census-redistricting.html (noting that “[t]he action directly conflicts with the traditional consensus interpretation of the Constitution”)

- Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083> (reporting on President Trump signing a memorandum “meant to exclude unauthorized immigrants from being taken into account when the government divides up congressional seats, a move that civil-rights groups swiftly vowed to challenge in court” and suggesting that the request may cause the Census Bureau to violate federal law).
- David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002> (reporting on President Trump’s July 21, 2020 memorandum noting that the “memo does not say how the U.S. Census Bureau could distinguish citizens from non-citizens – for any reason – because counters are prohibited from a citizenship question” and noting that Trump’s demand is “blatantly unconstitutional”).
- Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat> (recognizing that the President’s memo is without constitutional authority).
- Mica Rosenberg, Nick Brown & Mimi Dwyer, *Trump Orders Voting Districts to Exclude People in U.S. Illegally*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-usa-trump-migrants-census/trump-aims-to-stop-counting-of-illegal-migrants-in-redrawing-of-us-voting-maps-idUSKCN24M26U> (reporting that “U.S. census experts and lawyers say the action is legally dubious”).
- Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241> (reporting that “Congress has not given discretion [to the President] on what you’re supposed to be counting”).
- Kevin Liptak, Maegan Vazquez, Ariane de Vogue & Catherine E. Shoichet, *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html> (reporting that Trump’s “latest attempt to weaponize the census for an attack on immigrant communities will be found unconstitutional.”).
- Dartunorro Clark, *Trump Signs Memo to Omit Undocumented Immigrants From Census Apportionment Count*, NBC NEWS (July 21, 2020), <https://www.nbcnews.com/politics/white-house/trump-sign-executive-order-aimed-omitting-undocumented->

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immigrants-census-count-n1234228 (quoting advocates statements that “[t]he Constitution requires that everyone in the U.S. be counted in the census. President Trump can’t pick and choose”).

- Jordan Fabian & Greg Stohr, *Trump Bars U.S. Census From Counting Undocumented Immigrants*, BLOOMBERG (July 21, 2020), <https://www.bloomberg.com/news/articles/2020-07-21/trump-order-to-bar-census-from-counting-undocumented-immigrants> (quoting DNC President Tom Perez as saying the President’s order is “an unconstitutional order that has no purpose other than to silence and disempower Latino voices and communities of color”).
- Sam Levine, *Trump Orders Undocumented Immigrants Excluded From Key Census Count*, GUARDIAN (July 21, 2020), <https://www.theguardian.com/us-news/2020/jul/21/trump-executive-order-census-undocumented-immigrants> (“The Trump administration appears to be on shaky legal ground – the US constitution requires seats in Congress to be apportioned based on the ‘whole number of persons’ counted in each state during each decennial census.”).
- Matt Stieb, *Trump Tries Last-Ditch Order to Keep Undocumented Immigrants Off Census*, NEW YORK (July 21, 2020), <https://nymag.com/intelligencer/2020/07/trump-tries-last-ditch-order-to-keep-undocumented-off-census.html> (reporting that it is likely that President Trump’s order will be overturned because “the Constitution does not determine between citizens and noncitizens”).
- Nicole Narea, *Trump Is Using the Census to Undermine Immigrants’ Political Power*, VOX (July 21, 2020), <https://www.vox.com/policy-and-politics/2020/7/21/21328714/trump-executive-order-immigration-census-2020-redistricting> (explaining that the memorandum “could also indirectly discourage immigrants who have yet to respond to the census from doing so,” and that “legal experts say that it clearly flouts the US Constitution, which requires that every person in the US — not just every citizen — be counted in the census.”).
- Trevor Hughes, *Trump, Census Bureau Collect Driver’s License Data to Check Citizenship Status of Americans*, USA TODAY (July 16, 2020), <https://www.usatoday.com/story/news/nation/2020/07/16/trump-seeks-drivers-license-data-iowa-sc-check-citizenship/5445492002/> (quoting the ACLU that the sharing of license data pursuant to Executive Order 13880 “appears to be part of a scheme motivated by an unconstitutional discriminatory purpose to dilute the political power of communities of color.”).
- John Nichols, *Trump Wants to Use ‘Citizenship Data’ to Gerrymander Democracy*, THE NATION (July 13, 2019), <https://www.thenation.com/article/archive/trump-census-citizenship-data-gerrymander-democracy> (reporting that the use of citizenship data, “is a

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threat to the basic premises of representative democracy as they have historically been understood”).

- Tess Berenson, *President Trump Backs Down on Adding Citizenship Question to Census*, TIME (July 11, 2019), <https://time.com/5624485/trump-census-citizenship-question-pivot/> (quoting Thomas Wolf, counsel with the Brennan Center, as stating “The president doesn’t have the ability to unilaterally alter the census . . . The Trump administration is in a bind that it’s not going to be able to escape on the substance of the justification for a citizenship question.”).

The Census Count Is Possibly Inaccurate and Possibly Illegitimate

- *What risks does ending the census count early pose?*, PBS (Aug. 9, 2020), <https://www.pbs.org/newshour/show/what-risks-does-ending-the-census-count-early-pose> (noting that the decision to shorten the Census Bureau’s operations mere weeks after the memorandum calling for unauthorized immigrants to be excluded from the census numbers used to reapportion seats in Congress is “causing a lot of confusion” and asking “are there going to be enough indicators and metrics for the Census Bureau as well as outside researchers to really make that assessment of how good is the 2020 census? *How good are these results?*”).
- *Businesses to Help Wednesday as Census ends Sept. 30*, DAILY MOUNTAIN EAGLE, (Aug. 8, 2020), <http://www.mountaineagle.com/stories/businesses-to-help-wednesday-as-census-ends-sept-30,27659> (noting that Census experts and civil rights activists worry the sped-up deadlines could affect the thoroughness of the count, which determines how many congressional districts each state gets).
- Michael Wines, *At the Census Bureau, a Technical Memo Raises Alarms Over Politics*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/us/2020-census-undocumented-immigrants.html> (reporting that an internal Census Bureau memo issued on August 3, 2020 ordered an internal task force to explore statistical methods of compiling an accurate estimate of noncitizens in an effort to carry out President Trump’s July mandate to exclude undocumented residents from the apportionment count).
- Vania Patino *Census count finishing early may cause undercount in some TX Panhandle counties*, KLTN (Aug. 6, 2020), <https://www.kltv.com/2020/08/07/census-count-finishing-early-may-cause-undercount-some-tx-panhandle-counties/> (reporting that the Census Bureau’s new deadline “seems impossible” and that it is essential for the numbers to be correct for the representation to be correct).
- Michael Wines & Richard Fausset, *With Census Count Finishing Early, Fears of a Skewed Tally Rise*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html> (quoting former Census Bureau directors warning that an earlier deadline would “result in seriously incomplete enumerations in many areas across our country.”).

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- *Census to Finish Count Month Early*, WBUR (Aug. 4, 2020), <https://www.wbur.org/hereandnow/2020/08/04/census-count-cut-short> (noting that many people fear that the Census’s Bureau’s shortened operations period will reduce the accuracy of the population count).
- Hansi Lo Wang, *Census Cuts All Counting Efforts Short by a Month*, NPR (Aug. 3, 2020), <https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30> (“These last-minute changes to the constitutionally mandated count of every person living in the U.S. threaten the accuracy of population numbers used to determine the distribution of political representation and federal funding for the next decade.”).
- Dudley L. Poston, Jr. and Teresa A. Sullivan, *Excluding Undocumented Immigrants from the 2020 U.S. House Apportionment*, UVA CTR. FOR POLITICS (July 30, 2020), <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment> (“[I]t is not clear whether the Secretary of Commerce could produce acceptable numbers of undocumented residents according to the timetable the new memorandum requires.”).
- Adam Shaw & John Roberts, *Trump Signs Order to Prevent Illegal Immigrants from Being Counted in Redrawing Of Voting Districts*, FOX NEWS (July 21, 2020), <https://www.foxnews.com/politics/trump-to-sign-order-illegal-immigrants-voting-districts> (noting that it is “not clear how the administration would determine who was in the country illegally” for purposes of determining reapportionment).
- Brett Samuels & Rafael Bernal, *Trump Aims To Bar Undocumented Immigrants From Counting Toward House Representation*, HILL (July 21, 2020), <https://thehill.com/latino/508314-trump-aims-to-bar-undocumented-immigrants-from-counting-toward-house-representation> (suggesting that the administration may be using “questionable social science data techniques” including sampling, which was struck down by the Supreme Court in 1999).
- Chris Sommerfeldt, *Trump Moves to Exclude Undocumented Immigrants From Census Data on Voting Districts*, N.Y. DAILY NEWS (July 21, 2020), <https://www.nydailynews.com/news/politics/ny-trump-memo-immigrants-voting-census-20200721-5rexsyrd3vp7gqq2seu4of4-story.html> (noting that “it’s unclear how the government would be able to determine whether a resident is undocumented, since the Supreme Court blocked the Trump administration last year from adding a citizenship question to the 2020 census.”).

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- Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdff1af38_story.html (noting that the administrations appointment of two “high-level political appointees to the Census Bureau ... rais[ed] concern that the new hires could attempt to influence the count”).
- Colin A. Young, *Trump Seeks to Squeeze Immigrants Out of Apportionment*, WWLP-22NEWS (July 21, 2020), <https://www.wwlp.com/news/state-politics/trump-seeks-to-squeeze-immigrants-out-of-apportionment/> (reporting that “[t]he Census, throughout our history, has always been an accurate, even count. That’s what it’s been irrespective of which party controlled Congress, controlled the presidency, and [President Trump] clearly has no such qualms about accuracy or honesty.”).
- Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html> (reporting that veteran Census Bureau officials are “worried that the new appointees will seek to skew the 2020 census totals in a similarly inaccurate way, accomplishing what the battle over the citizenship question failed to achieve.”).
- Hansi Lo Wang, *Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen> (“Many voting rights advocates, however, are skeptical about the accuracy of data that would be generated from historical records that often contain out-of-date information, especially about whether a person is currently a U.S. citizen.”).
- Aaron Boyd, *How Census is Building a Citizenship Database Covering Everyone Living in the U.S.*, NEXTGOV (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275/> (quoting a statement from the Census Bureau’s website about citizenship data stating “[w]e are still receiving and analyzing data from external sources, including federal and state administrative records, and require additional time for evaluation”).
- Tara Bahrapour, *Census Bureau’s Request for Citizenship Data From DMVs Raises Privacy, Accuracy Concerns*, WASH. POST (Oct. 17, 2019), https://www.washingtonpost.com/local/social-issues/census-bureaus-request-for-citizenship-data-from-dmvs-raises-privacy-accuracy-concerns/2019/10/17/aa8771f2-f114-11e9-89eb-ec56cd414732_story.html (reporting that “DMV records [requested by the Executive Order] are not necessarily updated when a person naturalizes, and said relying on such data would result in undercounts of people who became citizens after getting driver’s

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licenses or state IDs — a group that includes a higher proportion of minorities than the general population.”).

- Nicole Narea, *Trump is Still Trying to Collect Citizenship Data For Redistricting*, VOX (Oct. 17, 2019), <https://www.vox.com/policy-and-politics/2019/10/17/20918989/trump-2020-census-citizenship-data-redistricting-drivers-license> (quoting Dale Ho, director of the ACLU’s Voting Rights Project, as saying that state’s Department of Motor Vehicles data is concerning because it is “highly unreliable due to poor database protocols and stale citizenship data”).
- Chris Dunn, *The Long Fight to Protect the 2020 Census from Trump*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/opinion/long-fight-protect-2020-census-trump> (“A worrisome threat to the legitimacy of this process lies with the step where the President is to certify census results to Congress.”).

An Inaccurate Reapportionment Affects Persons’ Rights

- Doug Thompson, *Time crunch has census-takers in Arkansas racing the clock*, (Aug. 9, 2020), ARK. DEMOCRAT-GAZETTE, <https://www.arkansasonline.com/news/2020/aug/09/census-count-time-cut-short-advocates-say/?latest> (affecting rights because “[i]f a county in Arkansas has a lower-than-accurate census count, it loses out on representation”).
- Megan Tomasic, *Earlier census deadline could cause W.Pa. officials to accelerate counts*, TRIB TOTAL MEDIA (July 31, 2020), <https://triblive.com/local/regional/local-leaders-respond-to-date-change-for-in-person-census-count-collection/> (estimating that the decision to cut short in-person counting efforts could result in “catastrophic outcomes for cities and towns across the country who rely on federal funding and congressional apportionment”).
- Katie Rogers, Adam Liptak, Michael Crowley & Michael Wines, *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html> (reporting on President Trump’s July 11 Rose Garden announcement that the administration’s goal is to obtain data on citizenship to eliminate noncitizens from the population bases used to draw political boundaries).
- Dan Mangan & Tucker Higgins, *Trump Abandons Fight to Put Citizenship Question on Census, Says He Can Get Data From Existing Records*, CNBC (July 11, 2019), <https://www.cnn.com/2019/07/11/trump-abandons-fight-to-put-citizenship-question-on-census.html> (quoting Dale Ho, director at the ACLU, as stating President Trump “lost in the Supreme Court, which saw through his lie about needing the question for the Voting Rights Act . . . It is clear he simply wanted to sow fear in immigrant communities and turbocharge Republican gerrymandering efforts by diluting the political influence of Latino communities.”).

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- Jeff Mason & David Shepardson, *Trump Drops Census Citizenship Question, Vows to Get Data From Government*, REUTERS (July 11, 2019), <https://www.reuters.com/article/us-usa-census/trump-drops-census-citizenship-question-vows-to-get-data-from-government-idUSKCN1U61D9> (quoting Michael Waldman, president of the Brennan Center, as saying that the Brennan Center would challenge “any administration move to violate the clear and strong rules protecting the privacy of everyone’s responses, including the rules barring the use of personal census data to conduct law or immigration enforcement activities.”).

Questions and Concerns That the Census Is Being Improperly Politically Influenced

- Hansi Lo Wang, *‘Not Enough Time’: Census Workers Fear Rushing Count Could Botch Results*, (Aug. 11, 2020), <https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results> (quoting a Census field worker as saying about the administration’s plans “It does not feel like we have the same mission in mind. We’re trying to get a complete count. I’m not sure everyone on the team has the same mission.” Also quoting a Senator as saying, “I believe that this deviation in schedule is driven not by expert opinions of career Census Bureau employees but by external pressure from the White House and the Department of Commerce for perceived political gain.”).
- Hansi Lo Wang, *Census Door Knocking Cut a Month Short Amid Pressure to Finish Count*, NPR (July 30, 2020), <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> (“The director of the Census Bureau testified that he first learned about Trump’s plans to attempt to exclude unauthorized immigrants from the census numbers used to reapportion seats in Congress not from any internal discussions, but from a news report ‘late on a Friday’ that said ‘such a directive may be coming down.’”).
- Michael Wines, *New Census Worry: A Rushed Count Could Mean a Botched One*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/us/trump-census.html> (reporting that despite admitting that “meeting that deadline is impossible,” “the White House declined to address questions about its census plans. Responding to a reporter’s questions, the Census Bureau issued a statement on Monday that neither confirmed nor denied an effort to hasten the completion of the count and the delivery of reapportionment figures.”).
- Tara Bahrapour, *Lawmakers, inspector general demand answers on Census Bureau political appointees*, WASH. POST (July 16, 2020), https://www.washingtonpost.com/local/social-issues/lawmakers-inspector-general-demand-answers-on-census-bureau-political-appointees/2020/07/16/6c355046-c656-11ea-8ffe-372be8d82298_story.html (describing several concerns over the addition of two partisan appointees to the Census

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Bureau staff because the move could “politicize the decennial census, which is used to determine congressional apportionment”).

- Nikita Lalwani & Rachel Brown, *Donald Trump’s Efforts to Distort the Census Have Started Back Up*, SLATE (July 17, 2020), <https://slate.com/news-and-politics/2020/07/donald-trump-census-citizenship-question-executive-order-scotus.html> (“The American Statistical Association decried the news [of two new partisan appointees] as creating ‘the perception—if not reality—of improper political influence.’”).
- Adrian Sainz, *Commerce Department IG Seeks Info on 2 Census Hirings*, WASH. POST (July 8, 2020), https://www.washingtonpost.com/national/commerce-department-ig-seeks-info-on-2-census-hirings/2020/07/08/c5579c3a-c14f-11ea-8908-68a2b9eae9e0_story.html (citing Thomas Wolf, a counsel with the Brennan Center, that the two new Census Bureau employees appointed by the Trump administration raise concerns that the administration may try to violate longstanding protections ensuring that data is kept confidential and secure).
- Michael Wines, *Knocked Off Track by Coronavirus, Census Announces Delay in 2020 Count*, N.Y. TIMES (Apr. 13, 2020), <https://www.nytimes.com/2020/04/13/us-census-coronavirus-delay.html> (“[A] number of experts [] said that the aura of secrecy surrounding this census, in sharp contrast to previous ones, limited support for the count and raised questions about what, if anything, was being concealed.”).
- Jeffrey Mervis, *Why the U.S. Census Bureau Could Have Trouble Complying With Trump’s Order to Count Citizens*, SCIENCE (Sept. 16, 2019), <https://www.sciencemag.org/news/2019/09/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens> (reporting that researchers fear complying with President Trump’s Executive Order could “tarnish” the Census Bureau’s “stellar reputation for nonpartisanship”).
- Hansi Lo Wang, *Trump Wants Citizenship Data Released But States Haven’t Asked Census For That*, NPR (Sept. 11, 2019), <https://www.npr.org/2019/09/11/759510775/trump-wants-citizenship-data-released-but-states-havent-asked-census-for-it> (reporting that Thomas Hofeller, a GOP redistricting strategist, concluded that detailed citizenship information could allow for redrawing of voting districts that would be “advantageous to Republicans and Non-Hispanic Whites,” but that the Trump Administration argues Hofeller’s study played little role in advocating for a citizenship question).
- Hansi Lo Wang, *Do Trump Officials Plan to Break Centuries of Precedent in Divvying Up Congress?*, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress> (reporting

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that the Census Bureau failed to provide clear answers as to whether citizenship would be used in the 2020 Census and factor into apportionment).

The abundance of reporting from an array of media outlets listed above overwhelmingly establishes that the July 1 FOIA Request satisfies the exceptional media interest requirement because each article raises a possible question about government integrity that affects public confidence.

For the reasons set forth above, the Brennan Center has established, and reiterates here, that there is widespread and exceptional media interest surrounding the topics in its July 1 FOIA Request. Therefore, expedited processing must be granted.

The Brennan Center Is Primarily Engaged in Disseminating Information

The Brennan Center should be granted expedited processing as it is an organization “primarily engaged in disseminating information,” and there is “urgency to inform the public” about the issues their request identifies. 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

In *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, the court concluded that CREW⁶ was primarily engaged in disseminating information based on its assertion that its “primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials.” *CREW*, 436 F. Supp. 3d at 360–61. Similarly, the July 1 FOIA Request specifies that the Brennan Center is primarily a “cutting-edge communications hub, shaping opinion by taking our message directly to the press and public,” *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed August 13, 2020). The Brennan Center works first to inform the public of injustice in society and then uses its expertise to advance its policies. The legal and advocacy work the Brennan Center does has the purpose of creating a public record of important issues, all of which supports the notion that the Center is primarily engaged in disseminating information.

Following President Trump issuing the July 21 Memorandum, a multitude of lawsuits were filed challenging the constitutionality of the administration’s plan. As the July 1 Request specified, the Brennan Center will use the agency records received through the request to “explain to the public how citizenship data may be used to calculate the apportionment.” Exhibit

⁶ CREW’s website indicates that they “use[] aggressive legal action, in-depth research, and bold communications to reduce the influence of money in politics and help foster a government that is ethical and accountable.” *Who We Are, About Us*, CREW, <https://www.citizensforethics.org/who-we-are> (last accessed August 10, 2020).

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A, at 7. Access to the requested documents is essential for the public to assess the Administration's plans for using citizenship for the 2020 Census count.

Additionally, the Brennan Center has an online library with thousands of publications, articles, and reports that are publicly available,⁷ including 75 that are dedicated solely to the census such as the following:

- Thomas Wolf, Kelly Percival, and Brianna Cea, *Getting the Count Right: Key Context for the 2020 Census*, Brennan Ctr. (March 31, 2020), <https://www.brennancenter.org/sites/default/files/2020-03/CensusPrimer.pdf>.
- Kelly Percival, *Strong Confidentiality Laws Protect All Data the Census Bureau Collects*, Brennan Ctr. (Dec. 5, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/strong-confidentiality-laws-protect-all-data-census-bureau-collects>.
- Kelly Percival, *Trump Administration Abandons Citizenship Question*, Brennan Ctr. (July 12, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/trump-administration-abandons-citizenship-question>.
- Kelly Percival & Brianna Cea, *Annotated Guide to the Amicus Briefs in the Supreme Court's Citizenship Question Case*, Brennan Ctr. (Apr. 11, 2019), <https://www.brennancenter.org/our-work/court-cases/annotated-guide-amicus-briefs-supreme-courts-citizenship-question-case>.
- Thomas Wolf & Brianna Cea, *A Critical History of the U.S. Census & Citizenship Questions*, Brennan Ctr. (Apr. 2, 2019), <https://www.brennancenter.org/our-work/research-reports/critical-history-us-census-citizenship-questions>.
- Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.
- Brianna Cea, *Potential Shifts in Political Power After the 2020 Census*, Brennan Ctr. (March 27, 2018), <https://www.brennancenter.org/our-work/research-reports/potential-shifts-political-power-after-2020-census>.

For the foregoing reasons, we request that you promptly grant our expedited processing request and produce agency records responsive to the July 1 FOIA Request. Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

⁷ *Library: A Fair & Accurate Census*, Brennan Ctr., <https://www.brennancenter.org/library/?issue=22&subissue=60&>.

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Respectfully,

/s/ Patrick Carome

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Caitlin Monahan

Mikayla C. Foster

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CERTIFICATION

I hereby certify, on behalf of the Brennan Center and pursuant to 5 U.S.C. § 552(6)(E)(vi), that the content of this letter, as well as the statements supporting the Brennan Center's request for expedition set forth in the original FOIA Request, are true and correct to the best of my and the Brennan Center's knowledge and belief.

/s/ Patrick Carome

Patrick Carome

Exhibit A

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July 1, 2020

By Electronic Mail

United States Department of Justice
Civil Rights Division

FOIA/PA Branch
Civil Rights Division
BICN, Room 3234
950 Pennsylvania Ave, N.W.
Washington DC 20530

Re: Freedom of Information Act Request

Dear Sir or Madam:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Department of Justice, Civil Rights Division, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation

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- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, the Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome
Patrick Carome
Mikayla C. Foster
Jared V. Grubow
Christian Ronald
Rieko H. Shepherd
Counsel for Requestors

Exhibit M

Office of the Attorney General

Department of Justice

WILMERHALE

August 13, 2020

By Electronic Mail

United States Department of Justice
Office of Attorney General

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
441 G Street, NW, 6th Floor
Washington, DC 20530-0001

Re: Brennan Center for Justice at NYU School of Law's Submission of Freedom of Information Act Request – FOIA-2020-01688

Dear Mr. Hibbard:

On July 2, 2020, our office delivered a Freedom of Information Act (“FOIA”) request on behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or the “Requestors”) to the U.S. Department of Justice Office of Information Policy located at 441 G Street, 6th Floor, Washington, DC 20530 (the “FOIA Request”). The FOIA Request (which is dated July 1st) is attached hereto as “Exhibit A.”

Please note that our July 1 FOIA Request seeks records dating from *June 27, 2019*. The response letter we received from this office on July 23, 2020, *see* attached Exhibit B, incorrectly noted the date from which the FOIA Request seeks records, *compare* Exhibit B at 1 ¶ 1 (“dating from July 27, 2019”), *with* Exhibit A, at 2 reqs. 1-4 (“All records created on or after June 27, 2019”). We write to ensure the accuracy of your search.

On July 23, 2020, you denied our request for expedited processing. Although we believe your denial was incorrect at that time, since then the political and media environment surrounding our request has substantially shifted and grounds for expedition have only strengthened. As such, and in lieu of an appeal, we submit this letter to renew and ask for reconsideration of our request for expedited processing. This letter underscores the urgency and time sensitivity of our July 1 FOIA Request and supplements the record with additional support

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for expedition. Please respond to this renewed request for expedition within 10 calendar days, or by the latest August 24, 2020.

Renewed Request for Expedited Processing

As we explained in the July 1 FOIA Request, the Brennan Center requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e). The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”² Exhibit A, at 5. We write to emphasize that expedited processing should be granted because there is widespread and exceptional media interest surrounding the 2020 Census, specifically as it relates to its uses for reapportionment, and the reporting by news organizations on the 2020 Census has also raised possible questions about the government’s integrity that affect public confidence. Further, as an organization primarily engaged in disseminating information, the Brennan Center urgently needs to inform the public of the information we are requesting.

Since the FOIA Request was filed, the exceptional interest surrounding the 2020 Census and the apportionment process has exploded. On July 21, 2020, President Trump issued a “Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census,” 85 Fed. Reg. 44,679 (July 23, 2020), which resulted in an outpouring of media and news reports.³ Further, at the time we submitted the FOIA Request, the Census Bureau had asked Congress for a four-month extension to report the state-population totals used for

¹ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

² 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

³ See, e.g., Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics; Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241>; Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083>; Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat>.

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reapportionment to the President, extending that deadline to April 31, 2021.⁴ But on August 3, 2020, the Census Bureau reported its plan to “accelerate the completion of data collection and apportionments counts” to meet the statutory deadline of December 31, 2020.⁵ Therefore, the Brennan Center’s need to receive the agency records responsive to its request, and to receive them as soon as possible, has only become more urgent.

Additionally, the Brennan Center is an organization that is primarily engaged in the dissemination of information, and there is an urgency to inform the public about the issues surrounding the 2020 Census. The Brennan Center’s efforts in law and policy are ancillary to its mission to inform and help shape public opinion. As the Brennan Center stated in its initial request, it plans to use the information received from the request to inform the public about the government’s plans to use citizenship data in calculating the reapportionment count, and how those plans were developed. With the Census Bureau’s deadline approaching even more quickly than when the request was initially submitted, these records are urgently needed to inform the public about how the government’s plans may affect their rights.

Widespread Media Interest Raising Questions of Government Integrity

As indicated in our initial request, how the Trump administration plans to use citizenship data to affect reapportionment, in contravention of the U.S. Constitution, raises questions about the government’s integrity and is the subject of intense media speculation. Media interest surrounding the government’s activities has persisted since the Supreme Court’s ruling in June 2019. And since we submitted the July 1 FOIA Request, news articles from a variety of media sources have reported nearly daily updates on the administration’s plan to collect citizenship data in conjunction with the 2020 Census, as well as its plan to truncate the timeline for conducting census operations in time to report the state-population totals to the President by December 31, 2020. We expect the influx of media attention to these matters only to continue and expand.

The courts have not specified exactly what threshold must be met for the subject matter of a FOIA request to qualify as a “matter of widespread and exceptional media interest,” but, under any standard, that threshold is met here. Agencies entertaining a request for expedited processing on this basis cannot “simply turn a blind eye to the flurry of media attention” surrounding a topic. *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 32 (D.D.C. 2004). Even just a “handful of articles” are sufficient to establish the “exceptional

⁴ See *Statement on 2020 Census Operational Adjustments Due to COVID-19*, Release No. CB20-RTQ.16, available at <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=10000001175162>

⁵ See *Statement from U.S. Census Bureau Director Steven Dillingham: Delivery a Completed and Accurate 2020 Census Count*, Release No. CB20-RTQ.23, available at <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>.

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media interest” prong if those articles are “published in a variety of publications, and repeatedly reference the ongoing national discussion” about the issues at hand. *Id.*

Each of the articles listed below also indicates that there are possible questions about the Government’s integrity that affect public confidence. See *Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 505 (D.D.C. 2018) (requiring “the same matter that draws widespread and exceptional media interest [to] be the matter in which there exists possible questions about the government’s integrity that affect public confidence”). A possible question about government integrity is raised where the articles indicate possible ethics issues, *id.* at 508 (“The primary way to determine whether such possible questions exist is by examining the state of public coverage of the matter at issue, and whether that coverage surfaces possible ethics issues.”), or if the reports suggest the government is acting unconstitutionally, see *Am. Civil Liberties Union*, 321 F. Supp. 2d at 32 (concluding that possible questions of government integrity were raised by articles that reported on whether the issue at bar violated the constitutional rights of the public).

The articles listed below raise issues such as: (1) whether the plans revealed by the President’s July 21st Memo are unconstitutional or otherwise violate federal law; (2) whether the citizenship data the Government plans to use will be accurate and thus legitimate; (3) whether the reapportionment counting plan affects the constitutional right to representation or affects other constitutional rights; and (4) whether the Census count is being improperly politically influenced or is otherwise lacking transparency. See *Citizens for Responsibility and Ethics in Wash. v. Dep’t of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020) (“CREW”) (instructing that “possible questions” does not require proving “wrongdoing by the government”). The public has the right to know that the Census and the government’s use of Census data is lawful, ethical, and fair; any suggestion to the contrary affects public confidence in the government.

The myriad media reports raise possible questions about government integrity, come from a variety of publications, and are all related to the agency records requested in the July 1 FOIA Request. They, at minimum, include the following:

The Government Is Acting Unconstitutionally

- *Editorial: The census counts, so Congress must make sure there’s time to make the count accurate*, HOUS. CHRONICLE (Aug. 5, 2020), <https://www.houstonchronicle.com/opinion/editorials/article/Editorial-The-census-counts-so-Congress-must-15461351.php> (“These immigrants work, pay taxes and contribute to the community. They should be counted. Everyone should. That’s not just a good idea, it’s the law.”).
- Steven Shepard, *Census Bureau will finish count earlier than expected, deliver data to Trump*, POLITICO (Aug. 3, 2020), <https://www.politico.com/news/2020/08/03/census-bureau-data-trump-391146> (reporting that “[t]his latest scheme is nothing more than a

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partisan attempt at manipulating the census to benefit the president’s allies, but it plainly violates the U.S. Constitution and federal laws, and cannot stand”).

- Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics (describing three lawsuits filed challenging the government’s arbitrary and capricious decision to exclude non-citizens from the census apportionment count).
- Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html> (noting that “[t]he action directly conflicts with the traditional consensus interpretation of the Constitution”)
- Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083> (reporting on President Trump signing a memorandum “meant to exclude unauthorized immigrants from being taken into account when the government divides up congressional seats, a move that civil-rights groups swiftly vowed to challenge in court” and suggesting that the request may cause the Census Bureau to violate federal law).
- David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002> (reporting on President Trump’s July 21, 2020 memorandum noting that the “memo does not say how the U.S. Census Bureau could distinguish citizens from non-citizens – for any reason – because counters are prohibited from a citizenship question” and noting that Trump’s demand is “blatantly unconstitutional”).
- Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat> (recognizing that the President’s memo is without constitutional authority).
- Mica Rosenberg, Nick Brown & Mimi Dwyer, *Trump Orders Voting Districts to Exclude People in U.S. Illegally*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-usa-trump-migrants-census/trump-aims-to-stop-counting-of-illegal-migrants-in-redrawing-of-us-voting-maps- idUSKCN24M26U> (reporting that “U.S. census experts and lawyers say the action is legally dubious”).
- Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump->

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undocumented-immigrants-census-376241 (reporting that “Congress has not given discretion [to the President] on what you’re supposed to be counting”).

- Kevin Liptak, Maegan Vazquez, Ariane de Vogue & Catherine E. Shoichet, *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html> (reporting that Trump’s “latest attempt to weaponize the census for an attack on immigrant communities will be found unconstitutional.”).
- Dartunorro Clark, *Trump Signs Memo to Omit Undocumented Immigrants From Census Apportionment Count*, NBC NEWS (July 21, 2020), <https://www.nbcnews.com/politics/white-house/trump-sign-executive-order-aimed-omitting-undocumented-immigrants-census-count-n1234228> (quoting advocates statements that “[t]he Constitution requires that everyone in the U.S. be counted in the census. President Trump can’t pick and choose”).
- Jordan Fabian & Greg Stohr, *Trump Bars U.S. Census From Counting Undocumented Immigrants*, BLOOMBERG (July 21, 2020), <https://www.bloomberg.com/news/articles/2020-07-21/trump-order-to-bar-census-from-counting-undocumented-immigrants> (quoting DNC President Tom Perez as saying the President’s order is “an unconstitutional order that has no purpose other than to silence and disempower Latino voices and communities of color”).
- Sam Levine, *Trump Orders Undocumented Immigrants Excluded From Key Census Count*, GUARDIAN (July 21, 2020), <https://www.theguardian.com/us-news/2020/jul/21/trump-executive-order-census-undocumented-immigrants> (“The Trump administration appears to be on shaky legal ground – the US constitution requires seats in Congress to be apportioned based on the ‘whole number of persons’ counted in each state during each decennial census.”).
- Matt Stieb, *Trump Tries Last-Ditch Order to Keep Undocumented Immigrants Off Census*, NEW YORK (July 21, 2020), <https://nymag.com/intelligencer/2020/07/trump-tries-last-ditch-order-to-keep-undocumented-off-census.html> (reporting that it is likely that President Trump’s order will be overturned because “the Constitution does not determine between citizens and noncitizens”).
- Nicole Narea, *Trump Is Using the Census to Undermine Immigrants’ Political Power*, VOX (July 21, 2020), <https://www.vox.com/policy-and-politics/2020/7/21/21328714/trump-executive-order-immigration-census-2020-redistricting> (explaining that the memorandum “could also indirectly discourage immigrants who have yet to respond to the census from doing so,” and that “legal experts say that it clearly flouts the US Constitution, which requires that every person in the US — not just every citizen — be counted in the census.”).

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- Trevor Hughes, *Trump, Census Bureau Collect Driver's License Data to Check Citizenship Status of Americans*, USA TODAY (July 16, 2020), <https://www.usatoday.com/story/news/nation/2020/07/16/trump-seeks-drivers-license-data-iowa-sc-check-citizenship/5445492002/> (quoting the ACLU that the sharing of license data pursuant to Executive Order 13880 “appears to be part of a scheme motivated by an unconstitutional discriminatory purpose to dilute the political power of communities of color.”).
- John Nichols, *Trump Wants to Use 'Citizenship Data' to Gerrymander Democracy*, THE NATION (July 13, 2019), <https://www.thenation.com/article/archive/trump-census-citizenship-data-gerrymander-democracy> (reporting that the use of citizenship data, “is a threat to the basic premises of representative democracy as they have historically been understood”).
- Tess Berenson, *President Trump Backs Down on Adding Citizenship Question to Census*, TIME (July 11, 2019), <https://time.com/5624485/trump-census-citizenship-question-pivot/> (quoting Thomas Wolf, counsel with the Brennan Center, as stating “The president doesn't have the ability to unilaterally alter the census . . . The Trump administration is in a bind that it's not going to be able to escape on the substance of the justification for a citizenship question.”).

The Census Count Is Possibly Inaccurate and Possibly Illegitimate

- *What risks does ending the census count early pose?*, PBS (Aug. 9, 2020), <https://www.pbs.org/newshour/show/what-risks-does-ending-the-census-count-early-pose> (noting that the decision to shorten the Census Bureau's operations mere weeks after the memorandum calling for unauthorized immigrants to be excluded from the census numbers used to reapportion seats in Congress is “causing a lot of confusion” and asking “are there going to be enough indicators and metrics for the Census Bureau as well as outside researchers to really make that assessment of how good is the 2020 census? *How good are these results?*”).
- *Businesses to Help Wednesday as Census ends Sept. 30*, DAILY MOUNTAIN EAGLE, (Aug. 8, 2020), <http://www.mountaineagle.com/stories/businesses-to-help-wednesday-as-census-ends-sept-30,27659> (noting that Census experts and civil rights activists worry the sped-up deadlines could affect the thoroughness of the count, which determines how many congressional districts each state gets).
- Michael Wines, *At the Census Bureau, a Technical Memo Raises Alarms Over Politics*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/us/2020-census-undocumented-immigrants.html> (reporting that an internal Census Bureau memo issued on August 3, 2020 ordered an internal task force to explore statistical methods of compiling an accurate estimate of noncitizens in an effort to carry out President Trump's July mandate to exclude undocumented residents from the apportionment count).

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- Vania Patino *Census count finishing early may cause undercount in some TX Panhandle counties*, KLTV (Aug. 6, 2020), <https://www.kltv.com/2020/08/07/census-count-finishing-early-may-cause-undercount-some-tx-panhandle-counties/> (reporting that the Census Bureau’s new deadline “seems impossible” and that it is essential for the numbers to be correct for the representation to be correct).
- Michael Wines & Richard Fausset, *With Census Count Finishing Early, Fears of a Skewed Tally Rise*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html> (quoting former Census Bureau directors warning that an earlier deadline would “result in seriously incomplete enumerations in many areas across our country.”).
- *Census to Finish Count Month Early*, WBUR (Aug. 4, 2020), <https://www.wbur.org/hereandnow/2020/08/04/census-count-cut-short> (noting that many people fear that the Census’s Bureau’s shortened operations period will reduce the accuracy of the population count).
- Hansi Lo Wang, *Census Cuts All Counting Efforts Short by a Month*, NPR (Aug. 3, 2020), <https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30> (“These last-minute changes to the constitutionally mandated count of every person living in the U.S. threaten the accuracy of population numbers used to determine the distribution of political representation and federal funding for the next decade.”).
- Dudley L. Poston, Jr. and Teresa A. Sullivan, *Excluding Undocumented Immigrants from the 2020 U.S. House Apportionment*, UVA CTR. FOR POLITICS (July 30, 2020), <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment> (“[I]t is not clear whether the Secretary of Commerce could produce acceptable numbers of undocumented residents according to the timetable the new memorandum requires.”).
- Adam Shaw & John Roberts, *Trump Signs Order to Prevent Illegal Immigrants from Being Counted in Redrawing Of Voting Districts*, FOX NEWS (July 21, 2020), <https://www.foxnews.com/politics/trump-to-sign-order-illegal-immigrants-voting-districts> (noting that it is “not clear how the administration would determine who was in the country illegally” for purposes of determining reapportionment).
- Brett Samuels & Rafael Bernal, *Trump Aims To Bar Undocumented Immigrants From Counting Toward House Representation*, HILL (July 21, 2020), <https://thehill.com/latino/508314-trump-aims-to-bar-undocumented-immigrants-from-counting-toward-house-representation> (suggesting that the administration may be using “questionable social science data techniques” including sampling, which was struck down by the Supreme Court in 1999).
- Chris Sommerfeldt, *Trump Moves to Exclude Undocumented Immigrants From Census Data on Voting Districts*, N.Y. DAILY NEWS (July 21, 2020), <https://www.nydailynews.com>.

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com/news/politics/ny-trump-memo-immigrants-voting-census-20200721-5rexsyrdbbd3vp7gqq2seu4of4-story.html (noting that “it’s unclear how the government would be able to determine whether a resident is undocumented, since the Supreme Court blocked the Trump administration last year from adding a citizenship question to the 2020 census.”).

- Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdff1af38_story.html (noting that the administration’s appointment of two “high-level political appointees to the Census Bureau ... rais[ed] concern that the new hires could attempt to influence the count”).
- Colin A. Young, *Trump Seeks to Squeeze Immigrants Out of Apportionment*, WWLP-22NEWS (July 21, 2020), <https://www.wwlp.com/news/state-politics/trump-seeks-to-squeeze-immigrants-out-of-apportionment/> (reporting that “[t]he Census, throughout our history, has always been an accurate, even count. That’s what it’s been irrespective of which party controlled Congress, controlled the presidency, and [President Trump] clearly has no such qualms about accuracy or honesty.”).
- Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html> (reporting that veteran Census Bureau officials are “worried that the new appointees will seek to skew the 2020 census totals in a similarly inaccurate way, accomplishing what the battle over the citizenship question failed to achieve.”).
- Hansi Lo Wang, *Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen> (“Many voting rights advocates, however, are skeptical about the accuracy of data that would be generated from historical records that often contain out-of-date information, especially about whether a person is currently a U.S. citizen.”).
- Aaron Boyd, *How Census is Building a Citizenship Database Covering Everyone Living in the U.S.*, NEXTGOV (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275/> (quoting a statement from the Census Bureau’s website about citizenship data stating “[w]e are still receiving and analyzing data from external sources, including federal and state administrative records, and require additional time for evaluation”).
- Tara Bahrapour, *Census Bureau’s Request for Citizenship Data From DMVs Raises Privacy, Accuracy Concerns*, WASH. POST (Oct. 17, 2019), <https://www.washingtonpost.com/local/social-issues/census-bureaus-request-for-citizenship-data-from-dmvs-raises->

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privacy-accuracy-concerns/2019/10/17/aa8771f2-f114-11e9-89eb-ec56cd414732_story.html (reporting that “DMV records [requested by the Executive Order] are not necessarily updated when a person naturalizes, and said relying on such data would result in undercounts of people who became citizens after getting driver’s licenses or state IDs — a group that includes a higher proportion of minorities than the general population.”).

- Nicole Narea, *Trump is Still Trying to Collect Citizenship Data For Redistricting*, VOX (Oct. 17, 2019), <https://www.vox.com/policy-and-politics/2019/10/17/20918989/trump-2020-census-citizenship-data-redistricting-drivers-license> (quoting Dale Ho, director of the ACLU’s Voting Rights Project, as saying that state’s Department of Motor Vehicles data is concerning because it is “highly unreliable due to poor database protocols and stale citizenship data”).
- Chris Dunn, *The Long Fight to Protect the 2020 Census from Trump*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/opinion/long-fight-protect-2020-census-trump> (“A worrisome threat to the legitimacy of this process lies with the step where the President is to certify census results to Congress.”).

An Inaccurate Reapportionment Affects Persons’ Rights

- Doug Thompson, *Time crunch has census-takers in Arkansas racing the clock*, (Aug. 9, 2020), ARK. DEMOCRAT-GAZETTE, <https://www.arkansasonline.com/news/2020/aug/09/census-count-time-cut-short-advocates-say/?latest> (affecting rights because “[i]f a county in Arkansas has a lower-than-accurate census count, it loses out on representation”).
- Megan Tomasic, *Earlier census deadline could cause W.Pa. officials to accelerate counts*, TRIB TOTAL MEDIA (July 31, 2020), <https://triblive.com/local/regional/local-leaders-respond-to-date-change-for-in-person-census-count-collection/> (estimating that the decision to cut short in-person counting efforts could result in “catastrophic outcomes for cities and towns across the country who rely on federal funding and congressional apportionment”).
- Katie Rogers, Adam Liptak, Michael Crowley & Michael Wines, *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html> (reporting on President Trump’s July 11 Rose Garden announcement that the administration’s goal is to obtain data on citizenship to eliminate noncitizens from the population bases used to draw political boundaries).
- Dan Mangan & Tucker Higgins, *Trump Abandons Fight to Put Citizenship Question on Census, Says He Can Get Data From Existing Records*, CNBC (July 11, 2019), <https://www.cnn.com/2019/07/11/trump-abandons-fight-to-put-citizenship-question-on-census.html> (quoting Dale Ho, director at the ACLU, as stating President Trump “lost in

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the Supreme Court, which saw through his lie about needing the question for the Voting Rights Act . . . It is clear he simply wanted to sow fear in immigrant communities and turbocharge Republican gerrymandering efforts by diluting the political influence of Latino communities.”).

- Jeff Mason & David Shepardson, *Trump Drops Census Citizenship Question, Vows to Get Data From Government*, REUTERS (July 11, 2019), <https://www.reuters.com/article/us-usa-census/trump-drops-census-citizenship-question-vows-to-get-data-from-government-idUSKCN1U61D9> (quoting Michael Waldman, president of the Brennan Center, as saying that the Brennan Center would challenge “any administration move to violate the clear and strong rules protecting the privacy of everyone’s responses, including the rules barring the use of personal census data to conduct law or immigration enforcement activities.”).

Questions and Concerns That the Census Is Being Improperly Politically Influenced

- Hansi Lo Wang, *‘Not Enough Time’: Census Workers Fear Rushing Count Could Botch Results*, (Aug. 11, 2020), <https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results> (quoting a Census field worker as saying about the administration’s plans “It does not feel like we have the same mission in mind. We’re trying to get a complete count. I’m not sure everyone on the team has the same mission.” Also quoting a Senator as saying, “I believe that this deviation in schedule is driven not by expert opinions of career Census Bureau employees but by external pressure from the White House and the Department of Commerce for perceived political gain.”).
- Hansi Lo Wang, *Census Door Knocking Cut a Month Short Amid Pressure to Finish Count*, NPR (July 30, 2020), <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> (“The director of the Census Bureau testified that he first learned about Trump’s plans to attempt to exclude unauthorized immigrants from the census numbers used to reapportion seats in Congress not from any internal discussions, but from a news report ‘late on a Friday’ that said ‘such a directive may be coming down.’”).
- Michael Wines, *New Census Worry: A Rushed Count Could Mean a Botched One*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/us/trump-census.html> (reporting that despite admitting that “meeting that deadline is impossible,” “the White House declined to address questions about its census plans. Responding to a reporter’s questions, the Census Bureau issued a statement on Monday that neither confirmed nor denied an effort to hasten the completion of the count and the delivery of reapportionment figures.”).
- Tara Bahrapour, *Lawmakers, inspector general demand answers on Census Bureau political appointees*, WASH. POST (July 16, 2020), <https://www.washingtonpost.com/>

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local/social-issues/lawmakers-inspector-general-demand-answers-on-census-bureau-political-appointees/2020/07/16/6c355046-c656-11ea-8ffe-372be8d82298_story.html (describing several concerns over the addition of two partisan appointees to the Census Bureau staff because the move could “politicize the decennial census, which is used to determine congressional apportionment”).

- Nikita Lalwani & Rachel Brown, *Donald Trump’s Efforts to Distort the Census Have Started Back Up*, SLATE (July 17, 2020), <https://slate.com/news-and-politics/2020/07/donald-trump-census-citizenship-question-executive-order-scotus.html> (“The American Statistical Association decried the news [of two new partisan appointees] as creating ‘the perception—if not reality—of improper political influence.’”).
- Adrian Sainz, *Commerce Department IG Seeks Info on 2 Census Hirings*, WASH. POST (July 8, 2020), https://www.washingtonpost.com/national/commerce-department-ig-seeks-info-on-2-census-hirings/2020/07/08/c5579c3a-c14f-11ea-8908-68a2b9eae9e0_story.html (citing Thomas Wolf, a counsel with the Brennan Center, that the two new Census Bureau employees appointed by the Trump administration raise concerns that the administration may try to violate longstanding protections ensuring that data is kept confidential and secure).
- Michael Wines, *Knocked Off Track by Coronavirus, Census Announces Delay in 2020 Count*, N.Y. TIMES (Apr. 13, 2020), <https://www.nytimes.com/2020/04/13/us/census-coronavirus-delay.html> (“[A] number of experts [] said that the aura of secrecy surrounding this census, in sharp contrast to previous ones, limited support for the count and raised questions about what, if anything, was being concealed.”).
- Jeffrey Mervis, *Why the U.S. Census Bureau Could Have Trouble Complying With Trump’s Order to Count Citizens*, SCIENCE (Sept. 16, 2019), <https://www.sciencemag.org/news/2019/09/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens> (reporting that researchers fear complying with President Trump’s Executive Order could “tarnish” the Census Bureau’s “stellar reputation for nonpartisanship”).
- Hansi Lo Wang, *Trump Wants Citizenship Data Released But States Haven’t Asked Census For That*, NPR (Sept. 11, 2019), <https://www.npr.org/2019/09/11/759510775/trump-wants-citizenship-data-released-but-states-havent-asked-census-for-it> (reporting that Thomas Hofeller, a GOP redistricting strategist, concluded that detailed citizenship information could allow for redrawing of voting districts that would be “advantageous to Republicans and Non-Hispanic Whites,” but that the Trump Administration argues Hofeller’s study played little role in advocating for a citizenship question).

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- Hansi Lo Wang, *Do Trump Officials Plan to Break Centuries of Precedent in Divvying Up Congress?*, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress> (reporting that the Census Bureau failed to provide clear answers as to whether citizenship would be used in the 2020 Census and factor into apportionment).

The abundance of reporting from an array of media outlets listed above overwhelmingly establishes that the July 1 FOIA Request satisfies the exceptional media interest requirement because each article raises a possible question about government integrity that affects public confidence.

For the reasons set forth above, the Brennan Center has established, and reiterates here, that there is widespread and exceptional media interest surrounding the topics in its July 1 FOIA Request. Therefore, expedited processing must be granted.

The Brennan Center Is Primarily Engaged in Disseminating Information

The Brennan Center should be granted expedited processing as it is an organization “primarily engaged in disseminating information,” and there is “urgency to inform the public” about the issues their request identifies. 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

In *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, the court concluded that CREW⁶ was primarily engaged in disseminating information based on its assertion that its “primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials.” *CREW*, 436 F. Supp. 3d at 360–61. Similarly, the July 1 FOIA Request specifies that the Brennan Center is primarily a “cutting-edge communications hub, shaping opinion by taking our message directly to the press and public,” *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed August 13, 2020). The Brennan Center works first to inform the public of injustice in society and then uses its expertise to advance its policies. The legal and advocacy work the Brennan Center does has the purpose of creating a public record of important issues, all of which supports the notion that the Center is primarily engaged in disseminating information.

Following President Trump issuing the July 21 Memorandum, a multitude of lawsuits were filed challenging the constitutionality of the administration’s plan. As the July 1 Request specified, the Brennan Center will use the agency records received through the request to “explain to the public how citizenship data may be used to calculate the apportionment.” Exhibit

⁶ CREW’s website indicates that they “use[] aggressive legal action, in-depth research, and bold communications to reduce the influence of money in politics and help foster a government that is ethical and accountable.” *Who We Are, About Us*, CREW, <https://www.citizensforethics.org/who-we-are> (last accessed August 10, 2020).

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A, at 7. Access to the requested documents is essential for the public to assess the Administration's plans for using citizenship for the 2020 Census count.

Additionally, the Brennan Center has an online library with thousands of publications, articles, and reports that are publicly available,⁷ including 75 that are dedicated solely to the census such as the following:

- Thomas Wolf, Kelly Percival, and Brianna Cea, *Getting the Count Right: Key Context for the 2020 Census*, Brennan Ctr. (March 31, 2020), <https://www.brennancenter.org/sites/default/files/2020-03/CensusPrimer.pdf>.
- Kelly Percival, *Strong Confidentiality Laws Protect All Data the Census Bureau Collects*, Brennan Ctr. (Dec. 5, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/strong-confidentiality-laws-protect-all-data-census-bureau-collects>.
- Kelly Percival, *Trump Administration Abandons Citizenship Question*, Brennan Ctr. (July 12, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/trump-administration-abandons-citizenship-question>.
- Kelly Percival & Brianna Cea, *Annotated Guide to the Amicus Briefs in the Supreme Court's Citizenship Question Case*, Brennan Ctr. (Apr. 11, 2019), <https://www.brennancenter.org/our-work/court-cases/annotated-guide-amicus-briefs-supreme-courts-citizenship-question-case>.
- Thomas Wolf & Brianna Cea, *A Critical History of the U.S. Census & Citizenship Questions*, Brennan Ctr. (Apr. 2, 2019), <https://www.brennancenter.org/our-work/research-reports/critical-history-us-census-citizenship-questions>.
- Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.
- Brianna Cea, *Potential Shifts in Political Power After the 2020 Census*, Brennan Ctr. (March 27, 2018), <https://www.brennancenter.org/our-work/research-reports/potential-shifts-political-power-after-2020-census>.

For the foregoing reasons, we request that you promptly grant our expedited processing request and produce agency records responsive to the July 1 FOIA Request. Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

⁷ *Library: A Fair & Accurate Census*, Brennan Ctr., <https://www.brennancenter.org/library/?issue=22&subissue=60&>.

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Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

Respectfully,

/s/ Patrick Carome

Patrick Carome

Caitlin Monahan

Mikayla C. Foster

Jared V. Grubow

Rieko H. Shepherd

Counsel for Requestors

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CERTIFICATION

I hereby certify, on behalf of the Brennan Center and pursuant to 5 U.S.C. § 552(6)(E)(vi), that the content of this letter, as well as the statements supporting the Brennan Center's request for expedition set forth in the original FOIA Request, are true and correct to the best of my and the Brennan Center's knowledge and belief.

/s/ Patrick Carome

Patrick Carome

Exhibit A

WILMERHALE

July 1, 2020

By Mail

United States Department of Justice
Office of the Attorney General

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
6th Floor
441 G. Street, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Sir:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Department of Justice, Office of the Attorney General, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:
 - calculating or otherwise formulating the 2020 total national population;

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:
- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
 - Christopher C. Demuth, Sr., Hudson Institute
 - Christopher J. Hajec, Immigration Reform Law Institute
 - David Dewhirst, Formerly of Department of Commerce
 - Eric Ueland, White House Office of Legislative Affairs
 - Eric W. Lee, Judicial Watch

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation
- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee

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- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, the Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome
Patrick Carome
Mikayla C. Foster
Jared V. Grubow
Christian Ronald
Rieko H. Shepherd
Counsel for Requestors

Exhibit B



U.S. Department of Justice
 Office of Information Policy
 Sixth Floor
 441 G Street, NW
 Washington, DC 20530-0001

Telephone: (202) 514-3642

July 23, 2020

Patrick Carome
 c/o Jared Grubow
 WilmerHale
 1875 Pennsylvania Avenue NW
 Washington, DC 20006
jared.grubow@wilmerhale.com

Re: FOIA-2020-01688
 FOIA-2020-01689
 FOIA-2020-01690
 FOIA-2020-01691
 DRH:VAV:GMG

Dear Patrick Carome:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) requests dated July 1, 2020 and received in this Office on July 13, 2020, in which you requested records from the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, and Legal Policy pertaining to the 2020 Census and use of citizenship status data collected pursuant to Executive Order 13880, dating from July 27, 2019. Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some delay in the processing of your requests.

Below are the tracking numbers associated with the requests you submitted:

FOIA-2020-01688	Office of the Attorney General
FOIA-2020-01689	Office of the Deputy Attorney General
FOIA-2020-01690	Office of the Associate Attorney General
FOIA-2020-01691	Office of Legal Policy

You have requested expedited processing of your requests pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(e)(1)(ii) (2018). Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. This Office cannot identify a particular urgency to inform the public about an actual or alleged federal government activity beyond the public's right to know about government activities generally.

You have also requested expedited processing of your requests pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See *id.* § 16.5(e)(2). The Director has determined

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that your request for expedited processing should be denied. Please be advised that, although your requests for expedited processing has been denied, it has been assigned to an analyst in this Office and our processing of it has been initiated.

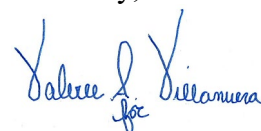
To the extent that your requests require a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of material, your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your requests. At this time we have assigned your requests to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your requests to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for your requests.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your requests, you may contact the analyst handing your request, Georgianna Gilbeaux, by telephone at the above number or you may write to them at the above address. You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your requests at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, 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, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to your requests for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your requests. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,



Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit N

Office of the Associate Attorney General

Department of Justice

WILMERHALE

August 13, 2020

By Electronic Mail

United States Department of Justice
Office of Associate Attorney General

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
441 G Street, NW, 6th Floor
Washington, DC 20530-0001

Re: Brennan Center for Justice at NYU School of Law's Submission of Freedom of Information Act Request – FOIA-2020-01690

Dear Mr. Hibbard:

On July 2, 2020, our office delivered a Freedom of Information Act (“FOIA”) request on behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or the “Requestors”) to the U.S. Department of Justice Office of Information Policy located at 441 G Street, 6th Floor, Washington, DC 20530 (the “FOIA Request”). The FOIA Request (which is dated July 1st) is attached hereto as “Exhibit A.”

Please note that our July 1 FOIA Request seeks records dating from *June 27, 2019*. The response letter we received from this office on July 23, 2020, *see* attached Exhibit B, incorrectly noted the date from which the FOIA Request seeks records, *compare* Exhibit B at 1 ¶ 1 (“dating from July 27, 2019”), *with* Exhibit A, at 2 reqs. 1-4 (“All records created on or after June 27, 2019”). We write to ensure the accuracy of your search.

On July 23, 2020, you denied our request for expedited processing. Although we believe your denial was incorrect at that time, since then the political and media environment surrounding our request has substantially shifted and grounds for expedition have only strengthened. As such, and in lieu of an appeal, we submit this letter to renew and ask for reconsideration of our request for expedited processing. This letter underscores the urgency and time sensitivity of our July 1 FOIA Request and supplements the record with additional support

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for expedition. Please respond to this renewed request for expedition within 10 calendar days, or by the latest August 24, 2020.

Renewed Request for Expedited Processing

As we explained in the July 1 FOIA Request, the Brennan Center requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e). The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”² Exhibit A, at 5. We write to emphasize that expedited processing should be granted because there is widespread and exceptional media interest surrounding the 2020 Census, specifically as it relates to its uses for reapportionment, and the reporting by news organizations on the 2020 Census has also raised possible questions about the government’s integrity that affect public confidence. Further, as an organization primarily engaged in disseminating information, the Brennan Center urgently needs to inform the public of the information we are requesting.

Since the FOIA Request was filed, the exceptional interest surrounding the 2020 Census and the apportionment process has exploded. On July 21, 2020, President Trump issued a “Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census,” 85 Fed. Reg. 44,679 (July 23, 2020), which resulted in an outpouring of media and news reports.³ Further, at the time we submitted the FOIA Request, the Census Bureau had asked Congress for a four-month extension to report the state-population totals used for

¹ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

² 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

³ See, e.g., Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics; Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241>; Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083>; Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat>.

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reapportionment to the President, extending that deadline to April 31, 2021.⁴ But on August 3, 2020, the Census Bureau reported its plan to “accelerate the completion of data collection and apportionments counts” to meet the statutory deadline of December 31, 2020.⁵ Therefore, the Brennan Center’s need to receive the agency records responsive to its request, and to receive them as soon as possible, has only become more urgent.

Additionally, the Brennan Center is an organization that is primarily engaged in the dissemination of information, and there is an urgency to inform the public about the issues surrounding the 2020 Census. The Brennan Center’s efforts in law and policy are ancillary to its mission to inform and help shape public opinion. As the Brennan Center stated in its initial request, it plans to use the information received from the request to inform the public about the government’s plans to use citizenship data in calculating the reapportionment count, and how those plans were developed. With the Census Bureau’s deadline approaching even more quickly than when the request was initially submitted, these records are urgently needed to inform the public about how the government’s plans may affect their rights.

Widespread Media Interest Raising Questions of Government Integrity

As indicated in our initial request, how the Trump administration plans to use citizenship data to affect reapportionment, in contravention of the U.S. Constitution, raises questions about the government’s integrity and is the subject of intense media speculation. Media interest surrounding the government’s activities has persisted since the Supreme Court’s ruling in June 2019. And since we submitted the July 1 FOIA Request, news articles from a variety of media sources have reported nearly daily updates on the administration’s plan to collect citizenship data in conjunction with the 2020 Census, as well as its plan to truncate the timeline for conducting census operations in time to report the state-population totals to the President by December 31, 2020. We expect the influx of media attention to these matters only to continue and expand.

The courts have not specified exactly what threshold must be met for the subject matter of a FOIA request to qualify as a “matter of widespread and exceptional media interest,” but, under any standard, that threshold is met here. Agencies entertaining a request for expedited processing on this basis cannot “simply turn a blind eye to the flurry of media attention” surrounding a topic. *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 32 (D.D.C. 2004). Even just a “handful of articles” are sufficient to establish the “exceptional

⁴ See *Statement on 2020 Census Operational Adjustments Due to COVID-19*, Release No. CB20-RTQ.16, available at <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=10000001175162>

⁵ See *Statement from U.S. Census Bureau Director Steven Dillingham: Delivery a Completed and Accurate 2020 Census Count*, Release No. CB20-RTQ.23, available at <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>.

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media interest” prong if those articles are “published in a variety of publications, and repeatedly reference the ongoing national discussion” about the issues at hand. *Id.*

Each of the articles listed below also indicates that there are possible questions about the Government’s integrity that affect public confidence. *See Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 505 (D.D.C. 2018) (requiring “the same matter that draws widespread and exceptional media interest [to] be the matter in which there exists possible questions about the government’s integrity that affect public confidence”). A possible question about government integrity is raised where the articles indicate possible ethics issues, *id.* at 508 (“The primary way to determine whether such possible questions exist is by examining the state of public coverage of the matter at issue, and whether that coverage surfaces possible ethics issues.”), or if the reports suggest the government is acting unconstitutionally, *see Am. Civil Liberties Union*, 321 F. Supp. 2d at 32 (concluding that possible questions of government integrity were raised by articles that reported on whether the issue at bar violated the constitutional rights of the public).

The articles listed below raise issues such as: (1) whether the plans revealed by the President’s July 21st Memo are unconstitutional or otherwise violate federal law; (2) whether the citizenship data the Government plans to use will be accurate and thus legitimate; (3) whether the reapportionment counting plan affects the constitutional right to representation or affects other constitutional rights; and (4) whether the Census count is being improperly politically influenced or is otherwise lacking transparency. *See Citizens for Responsibility and Ethics in Wash. v. Dep’t of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020) (“CREW”) (instructing that “possible questions” does not require proving “wrongdoing by the government”). The public has the right to know that the Census and the government’s use of Census data is lawful, ethical, and fair; any suggestion to the contrary affects public confidence in the government.

The myriad media reports raise possible questions about government integrity, come from a variety of publications, and are all related to the agency records requested in the July 1 FOIA Request. They, at minimum, include the following:

The Government Is Acting Unconstitutionally

- *Editorial: The census counts, so Congress must make sure there’s time to make the count accurate*, HOUS. CHRONICLE (Aug. 5, 2020), <https://www.houstonchronicle.com/opinion/editorials/article/Editorial-The-census-counts-so-Congress-must-15461351.php> (“These immigrants work, pay taxes and contribute to the community. They should be counted. Everyone should. That’s not just a good idea, it’s the law.”).
- Steven Shepard, *Census Bureau will finish count earlier than expected, deliver data to Trump*, POLITICO (Aug. 3, 2020), <https://www.politico.com/news/2020/08/03/census-bureau-data-trump-391146> (reporting that “[t]his latest scheme is nothing more than a

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partisan attempt at manipulating the census to benefit the president’s allies, but it plainly violates the U.S. Constitution and federal laws, and cannot stand”).

- Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics (describing three lawsuits filed challenging the government’s arbitrary and capricious decision to exclude non-citizens from the census apportionment count).
- Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html> (noting that “[t]he action directly conflicts with the traditional consensus interpretation of the Constitution”)
- Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083> (reporting on President Trump signing a memorandum “meant to exclude unauthorized immigrants from being taken into account when the government divides up congressional seats, a move that civil-rights groups swiftly vowed to challenge in court” and suggesting that the request may cause the Census Bureau to violate federal law).
- David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002> (reporting on President Trump’s July 21, 2020 memorandum noting that the “memo does not say how the U.S. Census Bureau could distinguish citizens from non-citizens – for any reason – because counters are prohibited from a citizenship question” and noting that Trump’s demand is “blatantly unconstitutional”).
- Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat> (recognizing that the President’s memo is without constitutional authority).
- Mica Rosenberg, Nick Brown & Mimi Dwyer, *Trump Orders Voting Districts to Exclude People in U.S. Illegally*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-usa-trump-migrants-census/trump-aims-to-stop-counting-of-illegal-migrants-in-redrawing-of-us-voting-maps- idUSKCN24M26U> (reporting that “U.S. census experts and lawyers say the action is legally dubious”).
- Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump->

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undocumented-immigrants-census-376241 (reporting that “Congress has not given discretion [to the President] on what you’re supposed to be counting”).

- Kevin Liptak, Maegan Vazquez, Ariane de Vogue & Catherine E. Shoichet, *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html> (reporting that Trump’s “latest attempt to weaponize the census for an attack on immigrant communities will be found unconstitutional.”).
- Dartunorro Clark, *Trump Signs Memo to Omit Undocumented Immigrants From Census Apportionment Count*, NBC NEWS (July 21, 2020), <https://www.nbcnews.com/politics/white-house/trump-sign-executive-order-aimed-omitting-undocumented-immigrants-census-count-n1234228> (quoting advocates statements that “[t]he Constitution requires that everyone in the U.S. be counted in the census. President Trump can’t pick and choose”).
- Jordan Fabian & Greg Stohr, *Trump Bars U.S. Census From Counting Undocumented Immigrants*, BLOOMBERG (July 21, 2020), <https://www.bloomberg.com/news/articles/2020-07-21/trump-order-to-bar-census-from-counting-undocumented-immigrants> (quoting DNC President Tom Perez as saying the President’s order is “an unconstitutional order that has no purpose other than to silence and disempower Latino voices and communities of color”).
- Sam Levine, *Trump Orders Undocumented Immigrants Excluded From Key Census Count*, GUARDIAN (July 21, 2020), <https://www.theguardian.com/us-news/2020/jul/21/trump-executive-order-census-undocumented-immigrants> (“The Trump administration appears to be on shaky legal ground – the US constitution requires seats in Congress to be apportioned based on the ‘whole number of persons’ counted in each state during each decennial census.”).
- Matt Stieb, *Trump Tries Last-Ditch Order to Keep Undocumented Immigrants Off Census*, NEW YORK (July 21, 2020), <https://nymag.com/intelligencer/2020/07/trump-tries-last-ditch-order-to-keep-undocumented-off-census.html> (reporting that it is likely that President Trump’s order will be overturned because “the Constitution does not determine between citizens and noncitizens”).
- Nicole Narea, *Trump Is Using the Census to Undermine Immigrants’ Political Power*, VOX (July 21, 2020), <https://www.vox.com/policy-and-politics/2020/7/21/21328714/trump-executive-order-immigration-census-2020-redistricting> (explaining that the memorandum “could also indirectly discourage immigrants who have yet to respond to the census from doing so,” and that “legal experts say that it clearly flouts the US Constitution, which requires that every person in the US — not just every citizen — be counted in the census.”).

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- Trevor Hughes, *Trump, Census Bureau Collect Driver's License Data to Check Citizenship Status of Americans*, USA TODAY (July 16, 2020), <https://www.usatoday.com/story/news/nation/2020/07/16/trump-seeks-drivers-license-data-iowa-sc-check-citizenship/5445492002/> (quoting the ACLU that the sharing of license data pursuant to Executive Order 13880 “appears to be part of a scheme motivated by an unconstitutional discriminatory purpose to dilute the political power of communities of color.”).
- John Nichols, *Trump Wants to Use 'Citizenship Data' to Gerrymander Democracy*, THE NATION (July 13, 2019), <https://www.thenation.com/article/archive/trump-census-citizenship-data-gerrymander-democracy> (reporting that the use of citizenship data, “is a threat to the basic premises of representative democracy as they have historically been understood”).
- Tess Berenson, *President Trump Backs Down on Adding Citizenship Question to Census*, TIME (July 11, 2019), <https://time.com/5624485/trump-census-citizenship-question-pivot/> (quoting Thomas Wolf, counsel with the Brennan Center, as stating “The president doesn't have the ability to unilaterally alter the census . . . The Trump administration is in a bind that it's not going to be able to escape on the substance of the justification for a citizenship question.”).

The Census Count Is Possibly Inaccurate and Possibly Illegitimate

- *What risks does ending the census count early pose?*, PBS (Aug. 9, 2020), <https://www.pbs.org/newshour/show/what-risks-does-ending-the-census-count-early-pose> (noting that the decision to shorten the Census Bureau's operations mere weeks after the memorandum calling for unauthorized immigrants to be excluded from the census numbers used to reapportion seats in Congress is “causing a lot of confusion” and asking “are there going to be enough indicators and metrics for the Census Bureau as well as outside researchers to really make that assessment of how good is the 2020 census? *How good are these results?*”).
- *Businesses to Help Wednesday as Census ends Sept. 30*, DAILY MOUNTAIN EAGLE, (Aug. 8, 2020), <http://www.mountaineagle.com/stories/businesses-to-help-wednesday-as-census-ends-sept-30,27659> (noting that Census experts and civil rights activists worry the sped-up deadlines could affect the thoroughness of the count, which determines how many congressional districts each state gets).
- Michael Wines, *At the Census Bureau, a Technical Memo Raises Alarms Over Politics*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/us/2020-census-undocumented-immigrants.html> (reporting that an internal Census Bureau memo issued on August 3, 2020 ordered an internal task force to explore statistical methods of compiling an accurate estimate of noncitizens in an effort to carry out President Trump's July mandate to exclude undocumented residents from the apportionment count).

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- Vania Patino *Census count finishing early may cause undercount in some TX Panhandle counties*, KLTV (Aug. 6, 2020), <https://www.kltv.com/2020/08/07/census-count-finishing-early-may-cause-undercount-some-tx-panhandle-counties/> (reporting that the Census Bureau’s new deadline “seems impossible” and that it is essential for the numbers to be correct for the representation to be correct).
- Michael Wines & Richard Fausset, *With Census Count Finishing Early, Fears of a Skewed Tally Rise*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html> (quoting former Census Bureau directors warning that an earlier deadline would “result in seriously incomplete enumerations in many areas across our country.”).
- *Census to Finish Count Month Early*, WBUR (Aug. 4, 2020), <https://www.wbur.org/hereandnow/2020/08/04/census-count-cut-short> (noting that many people fear that the Census’s Bureau’s shortened operations period will reduce the accuracy of the population count).
- Hansi Lo Wang, *Census Cuts All Counting Efforts Short by a Month*, NPR (Aug. 3, 2020), <https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30> (“These last-minute changes to the constitutionally mandated count of every person living in the U.S. threaten the accuracy of population numbers used to determine the distribution of political representation and federal funding for the next decade.”).
- Dudley L. Poston, Jr. and Teresa A. Sullivan, *Excluding Undocumented Immigrants from the 2020 U.S. House Apportionment*, UVA CTR. FOR POLITICS (July 30, 2020), <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment> (“[I]t is not clear whether the Secretary of Commerce could produce acceptable numbers of undocumented residents according to the timetable the new memorandum requires.”).
- Adam Shaw & John Roberts, *Trump Signs Order to Prevent Illegal Immigrants from Being Counted in Redrawing Of Voting Districts*, FOX NEWS (July 21, 2020), <https://www.foxnews.com/politics/trump-to-sign-order-illegal-immigrants-voting-districts> (noting that it is “not clear how the administration would determine who was in the country illegally” for purposes of determining reapportionment).
- Brett Samuels & Rafael Bernal, *Trump Aims To Bar Undocumented Immigrants From Counting Toward House Representation*, HILL (July 21, 2020), <https://thehill.com/latino/508314-trump-aims-to-bar-undocumented-immigrants-from-counting-toward-house-representation> (suggesting that the administration may be using “questionable social science data techniques” including sampling, which was struck down by the Supreme Court in 1999).
- Chris Sommerfeldt, *Trump Moves to Exclude Undocumented Immigrants From Census Data on Voting Districts*, N.Y. DAILY NEWS (July 21, 2020), <https://www.nydailynews.com>.

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com/news/politics/ny-trump-memo-immigrants-voting-census-20200721-5rexsyrd3vp7gqq2seu4of4-story.html (noting that “it’s unclear how the government would be able to determine whether a resident is undocumented, since the Supreme Court blocked the Trump administration last year from adding a citizenship question to the 2020 census.”).

- Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdff1af38_story.html (noting that the administration’s appointment of two “high-level political appointees to the Census Bureau ... rais[ed] concern that the new hires could attempt to influence the count”).
- Colin A. Young, *Trump Seeks to Squeeze Immigrants Out of Apportionment*, WWLP-22NEWS (July 21, 2020), <https://www.wwlp.com/news/state-politics/trump-seeks-to-squeeze-immigrants-out-of-apportionment/> (reporting that “[t]he Census, throughout our history, has always been an accurate, even count. That’s what it’s been irrespective of which party controlled Congress, controlled the presidency, and [President Trump] clearly has no such qualms about accuracy or honesty.”).
- Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html> (reporting that veteran Census Bureau officials are “worried that the new appointees will seek to skew the 2020 census totals in a similarly inaccurate way, accomplishing what the battle over the citizenship question failed to achieve.”).
- Hansi Lo Wang, *Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen> (“Many voting rights advocates, however, are skeptical about the accuracy of data that would be generated from historical records that often contain out-of-date information, especially about whether a person is currently a U.S. citizen.”).
- Aaron Boyd, *How Census is Building a Citizenship Database Covering Everyone Living in the U.S.*, NEXTGOV (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275/> (quoting a statement from the Census Bureau’s website about citizenship data stating “[w]e are still receiving and analyzing data from external sources, including federal and state administrative records, and require additional time for evaluation”).
- Tara Bahrapour, *Census Bureau’s Request for Citizenship Data From DMVs Raises Privacy, Accuracy Concerns*, WASH. POST (Oct. 17, 2019), <https://www.washingtonpost.com/local/social-issues/census-bureaus-request-for-citizenship-data-from-dmvs-raises->

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privacy-accuracy-concerns/2019/10/17/aa8771f2-f114-11e9-89eb-ec56cd414732_story.html (reporting that “DMV records [requested by the Executive Order] are not necessarily updated when a person naturalizes, and said relying on such data would result in undercounts of people who became citizens after getting driver’s licenses or state IDs — a group that includes a higher proportion of minorities than the general population.”).

- Nicole Narea, *Trump is Still Trying to Collect Citizenship Data For Redistricting*, VOX (Oct. 17, 2019), <https://www.vox.com/policy-and-politics/2019/10/17/20918989/trump-2020-census-citizenship-data-redistricting-drivers-license> (quoting Dale Ho, director of the ACLU’s Voting Rights Project, as saying that state’s Department of Motor Vehicles data is concerning because it is “highly unreliable due to poor database protocols and stale citizenship data”).
- Chris Dunn, *The Long Fight to Protect the 2020 Census from Trump*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/opinion/long-fight-protect-2020-census-trump> (“A worrisome threat to the legitimacy of this process lies with the step where the President is to certify census results to Congress.”).

An Inaccurate Reapportionment Affects Persons’ Rights

- Doug Thompson, *Time crunch has census-takers in Arkansas racing the clock*, (Aug. 9, 2020), ARK. DEMOCRAT-GAZETTE, <https://www.arkansasonline.com/news/2020/aug/09/census-count-time-cut-short-advocates-say/?latest> (affecting rights because “[i]f a county in Arkansas has a lower-than-accurate census count, it loses out on representation”).
- Megan Tomasic, *Earlier census deadline could cause W.Pa. officials to accelerate counts*, TRIB TOTAL MEDIA (July 31, 2020), <https://triblive.com/local/regional/local-leaders-respond-to-date-change-for-in-person-census-count-collection/> (estimating that the decision to cut short in-person counting efforts could result in “catastrophic outcomes for cities and towns across the country who rely on federal funding and congressional apportionment”).
- Katie Rogers, Adam Liptak, Michael Crowley & Michael Wines, *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html> (reporting on President Trump’s July 11 Rose Garden announcement that the administration’s goal is to obtain data on citizenship to eliminate noncitizens from the population bases used to draw political boundaries).
- Dan Mangan & Tucker Higgins, *Trump Abandons Fight to Put Citizenship Question on Census, Says He Can Get Data From Existing Records*, CNBC (July 11, 2019), <https://www.cnn.com/2019/07/11/trump-abandons-fight-to-put-citizenship-question-on-census.html> (quoting Dale Ho, director at the ACLU, as stating President Trump “lost in

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the Supreme Court, which saw through his lie about needing the question for the Voting Rights Act . . . It is clear he simply wanted to sow fear in immigrant communities and turbocharge Republican gerrymandering efforts by diluting the political influence of Latino communities.”).

- Jeff Mason & David Shepardson, *Trump Drops Census Citizenship Question, Vows to Get Data From Government*, REUTERS (July 11, 2019), <https://www.reuters.com/article/us-usa-census/trump-drops-census-citizenship-question-vows-to-get-data-from-government-idUSKCN1U61D9> (quoting Michael Waldman, president of the Brennan Center, as saying that the Brennan Center would challenge “any administration move to violate the clear and strong rules protecting the privacy of everyone’s responses, including the rules barring the use of personal census data to conduct law or immigration enforcement activities.”).

Questions and Concerns That the Census Is Being Improperly Politically Influenced

- Hansi Lo Wang, *‘Not Enough Time’: Census Workers Fear Rushing Count Could Botch Results*, (Aug. 11, 2020), <https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results> (quoting a Census field worker as saying about the administration’s plans “It does not feel like we have the same mission in mind. We’re trying to get a complete count. I’m not sure everyone on the team has the same mission.” Also quoting a Senator as saying, “I believe that this deviation in schedule is driven not by expert opinions of career Census Bureau employees but by external pressure from the White House and the Department of Commerce for perceived political gain.”).
- Hansi Lo Wang, *Census Door Knocking Cut a Month Short Amid Pressure to Finish Count*, NPR (July 30, 2020), <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> (“The director of the Census Bureau testified that he first learned about Trump’s plans to attempt to exclude unauthorized immigrants from the census numbers used to reapportion seats in Congress not from any internal discussions, but from a news report ‘late on a Friday’ that said ‘such a directive may be coming down.’”).
- Michael Wines, *New Census Worry: A Rushed Count Could Mean a Botched One*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/us/trump-census.html> (reporting that despite admitting that “meeting that deadline is impossible,” “the White House declined to address questions about its census plans. Responding to a reporter’s questions, the Census Bureau issued a statement on Monday that neither confirmed nor denied an effort to hasten the completion of the count and the delivery of reapportionment figures.”).
- Tara Bahrapour, *Lawmakers, inspector general demand answers on Census Bureau political appointees*, WASH. POST (July 16, 2020), <https://www.washingtonpost.com/>

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local/social-issues/lawmakers-inspector-general-demand-answers-on-census-bureau-political-appointees/2020/07/16/6c355046-c656-11ea-8ffe-372be8d82298_story.html (describing several concerns over the addition of two partisan appointees to the Census Bureau staff because the move could “politicize the decennial census, which is used to determine congressional apportionment”).

- Nikita Lalwani & Rachel Brown, *Donald Trump’s Efforts to Distort the Census Have Started Back Up*, SLATE (July 17, 2020), <https://slate.com/news-and-politics/2020/07/donald-trump-census-citizenship-question-executive-order-scotus.html> (“The American Statistical Association decried the news [of two new partisan appointees] as creating ‘the perception—if not reality—of improper political influence.’”).
- Adrian Sainz, *Commerce Department IG Seeks Info on 2 Census Hirings*, WASH. POST (July 8, 2020), https://www.washingtonpost.com/national/commerce-department-ig-seeks-info-on-2-census-hirings/2020/07/08/c5579c3a-c14f-11ea-8908-68a2b9eae9e0_story.html (citing Thomas Wolf, a counsel with the Brennan Center, that the two new Census Bureau employees appointed by the Trump administration raise concerns that the administration may try to violate longstanding protections ensuring that data is kept confidential and secure).
- Michael Wines, *Knocked Off Track by Coronavirus, Census Announces Delay in 2020 Count*, N.Y. TIMES (Apr. 13, 2020), <https://www.nytimes.com/2020/04/13/us/census-coronavirus-delay.html> (“[A] number of experts [] said that the aura of secrecy surrounding this census, in sharp contrast to previous ones, limited support for the count and raised questions about what, if anything, was being concealed.”).
- Jeffrey Mervis, *Why the U.S. Census Bureau Could Have Trouble Complying With Trump’s Order to Count Citizens*, SCIENCE (Sept. 16, 2019), <https://www.sciencemag.org/news/2019/09/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens> (reporting that researchers fear complying with President Trump’s Executive Order could “tarnish” the Census Bureau’s “stellar reputation for nonpartisanship”).
- Hansi Lo Wang, *Trump Wants Citizenship Data Released But States Haven’t Asked Census For That*, NPR (Sept. 11, 2019), <https://www.npr.org/2019/09/11/759510775/trump-wants-citizenship-data-released-but-states-havent-asked-census-for-it> (reporting that Thomas Hofeller, a GOP redistricting strategist, concluded that detailed citizenship information could allow for redrawing of voting districts that would be “advantageous to Republicans and Non-Hispanic Whites,” but that the Trump Administration argues Hofeller’s study played little role in advocating for a citizenship question).

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- Hansi Lo Wang, *Do Trump Officials Plan to Break Centuries of Precedent in Divvying Up Congress?*, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress> (reporting that the Census Bureau failed to provide clear answers as to whether citizenship would be used in the 2020 Census and factor into apportionment).

The abundance of reporting from an array of media outlets listed above overwhelmingly establishes that the July 1 FOIA Request satisfies the exceptional media interest requirement because each article raises a possible question about government integrity that affects public confidence.

For the reasons set forth above, the Brennan Center has established, and reiterates here, that there is widespread and exceptional media interest surrounding the topics in its July 1 FOIA Request. Therefore, expedited processing must be granted.

The Brennan Center Is Primarily Engaged in Disseminating Information

The Brennan Center should be granted expedited processing as it is an organization “primarily engaged in disseminating information,” and there is “urgency to inform the public” about the issues their request identifies. 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

In *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, the court concluded that CREW⁶ was primarily engaged in disseminating information based on its assertion that its “primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials.” *CREW*, 436 F. Supp. 3d at 360–61. Similarly, the July 1 FOIA Request specifies that the Brennan Center is primarily a “cutting-edge communications hub, shaping opinion by taking our message directly to the press and public,” *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed August 13, 2020). The Brennan Center works first to inform the public of injustice in society and then uses its expertise to advance its policies. The legal and advocacy work the Brennan Center does has the purpose of creating a public record of important issues, all of which supports the notion that the Center is primarily engaged in disseminating information.

Following President Trump issuing the July 21 Memorandum, a multitude of lawsuits were filed challenging the constitutionality of the administration’s plan. As the July 1 Request specified, the Brennan Center will use the agency records received through the request to “explain to the public how citizenship data may be used to calculate the apportionment.” Exhibit

⁶ CREW’s website indicates that they “use[] aggressive legal action, in-depth research, and bold communications to reduce the influence of money in politics and help foster a government that is ethical and accountable.” *Who We Are, About Us*, CREW, <https://www.citizensforethics.org/who-we-are> (last accessed August 10, 2020).

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A, at 7. Access to the requested documents is essential for the public to assess the Administration's plans for using citizenship for the 2020 Census count.

Additionally, the Brennan Center has an online library with thousands of publications, articles, and reports that are publicly available,⁷ including 75 that are dedicated solely to the census such as the following:

- Thomas Wolf, Kelly Percival, and Brianna Cea, *Getting the Count Right: Key Context for the 2020 Census*, Brennan Ctr. (March 31, 2020), <https://www.brennancenter.org/sites/default/files/2020-03/CensusPrimer.pdf>.
- Kelly Percival, *Strong Confidentiality Laws Protect All Data the Census Bureau Collects*, Brennan Ctr. (Dec. 5, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/strong-confidentiality-laws-protect-all-data-census-bureau-collects>.
- Kelly Percival, *Trump Administration Abandons Citizenship Question*, Brennan Ctr. (July 12, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/trump-administration-abandons-citizenship-question>.
- Kelly Percival & Brianna Cea, *Annotated Guide to the Amicus Briefs in the Supreme Court's Citizenship Question Case*, Brennan Ctr. (Apr. 11, 2019), <https://www.brennancenter.org/our-work/court-cases/annotated-guide-amicus-briefs-supreme-courts-citizenship-question-case>.
- Thomas Wolf & Brianna Cea, *A Critical History of the U.S. Census & Citizenship Questions*, Brennan Ctr. (Apr. 2, 2019), <https://www.brennancenter.org/our-work/research-reports/critical-history-us-census-citizenship-questions>.
- Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.
- Brianna Cea, *Potential Shifts in Political Power After the 2020 Census*, Brennan Ctr. (March 27, 2018), <https://www.brennancenter.org/our-work/research-reports/potential-shifts-political-power-after-2020-census>.

For the foregoing reasons, we request that you promptly grant our expedited processing request and produce agency records responsive to the July 1 FOIA Request. Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

⁷ *Library: A Fair & Accurate Census*, Brennan Ctr., <https://www.brennancenter.org/library/?issue=22&subissue=60&>.

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Respectfully,

/s/ Patrick Carome

Patrick Carome

Caitlin Monahan

Mikayla C. Foster

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Counsel for Requestors

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CERTIFICATION

I hereby certify, on behalf of the Brennan Center and pursuant to 5 U.S.C. § 552(6)(E)(vi), that the content of this letter, as well as the statements supporting the Brennan Center's request for expedition set forth in the original FOIA Request, are true and correct to the best of my and the Brennan Center's knowledge and belief.

/s/ Patrick Carome
Patrick Carome

Exhibit A

WILMERHALE

July 1, 2020

By Mail

United States Department of Justice
Office of the Associate Attorney General

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
6th Floor
441 G. Street, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Sir:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Department of Justice, Office of the Associate Attorney General, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation

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- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared W. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
120 Broadway
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome

Mikayla C. Foster

Jared V. Grubow

Christian Ronald

Rieko H. Shepherd

Counsel for Requestors

Exhibit B



U.S. Department of Justice
 Office of Information Policy
 Sixth Floor
 441 G Street, NW
 Washington, DC 20530-0001

Telephone: (202) 514-3642

July 23, 2020

Patrick Carome
 c/o Jared Grubow
 WilmerHale
 1875 Pennsylvania Avenue NW
 Washington, DC 20006
jared.grubow@wilmerhale.com

Re: FOIA-2020-01688
 FOIA-2020-01689
 FOIA-2020-01690
 FOIA-2020-01691
 DRH:VAV:GMG

Dear Patrick Carome:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) requests dated July 1, 2020 and received in this Office on July 13, 2020, in which you requested records from the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, and Legal Policy pertaining to the 2020 Census and use of citizenship status data collected pursuant to Executive Order 13880, dating from July 27, 2019. Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some delay in the processing of your requests.

Below are the tracking numbers associated with the requests you submitted:

FOIA-2020-01688	Office of the Attorney General
FOIA-2020-01689	Office of the Deputy Attorney General
FOIA-2020-01690	Office of the Associate Attorney General
FOIA-2020-01691	Office of Legal Policy

You have requested expedited processing of your requests pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(e)(1)(ii) (2018). Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. This Office cannot identify a particular urgency to inform the public about an actual or alleged federal government activity beyond the public's right to know about government activities generally.

You have also requested expedited processing of your requests pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See *id.* § 16.5(e)(2). The Director has determined

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that your request for expedited processing should be denied. Please be advised that, although your requests for expedited processing has been denied, it has been assigned to an analyst in this Office and our processing of it has been initiated.

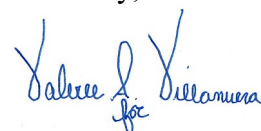
To the extent that your requests require a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of material, your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your requests. At this time we have assigned your requests to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your requests to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for your requests.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your requests, you may contact the analyst handing your request, Georgianna Gilbeaux, by telephone at the above number or you may write to them at the above address. You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your requests at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, 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, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to your requests for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your requests. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,



Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit O

Office of the Deputy Attorney General

Department of Justice

WILMERHALE

August 13, 2020

By Electronic Mail

United States Department of Justice
Office of Deputy Attorney General

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
441 G Street, NW, 6th Floor
Washington, DC 20530-0001

Re: Brennan Center for Justice at NYU School of Law's Submission of Freedom of Information Act Request – FOIA-2020-01689

Dear Mr. Hibbard:

On July 2, 2020, our office delivered a Freedom of Information Act (“FOIA”) request on behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or the “Requestors”) to the U.S. Department of Justice Office of Information Policy located at 441 G Street, 6th Floor, Washington, DC 20530 (the “FOIA Request”). The FOIA Request (which is dated July 1st) is attached hereto as “Exhibit A.”

Please note that our July 1 FOIA Request seeks records dating from *June 27, 2019*. The response letter we received from this office on July 23, 2020, *see* attached Exhibit B, incorrectly noted the date from which the FOIA Request seeks records, *compare* Exhibit B at 1 ¶ 1 (“dating from July 27, 2019”), *with* Exhibit A, at 2 reqs. 1-4 (“All records created on or after June 27, 2019”). We write to ensure the accuracy of your search.

On July 23, 2020, you denied our request for expedited processing. Although we believe your denial was incorrect at that time, since then the political and media environment surrounding our request has substantially shifted and grounds for expedition have only strengthened. As such, and in lieu of an appeal, we submit this letter to renew and ask for reconsideration of our request for expedited processing. This letter underscores the urgency and time sensitivity of our July 1 FOIA Request and supplements the record with additional support

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for expedition. Please respond to this renewed request for expedition within 10 calendar days, or by the latest August 24, 2020.

Renewed Request for Expedited Processing

As we explained in the July 1 FOIA Request, the Brennan Center requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e). The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”² Exhibit A, at 5. We write to emphasize that expedited processing should be granted because there is widespread and exceptional media interest surrounding the 2020 Census, specifically as it relates to its uses for reapportionment, and the reporting by news organizations on the 2020 Census has also raised possible questions about the government’s integrity that affect public confidence. Further, as an organization primarily engaged in disseminating information, the Brennan Center urgently needs to inform the public of the information we are requesting.

Since the FOIA Request was filed, the exceptional interest surrounding the 2020 Census and the apportionment process has exploded. On July 21, 2020, President Trump issued a “Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census,” 85 Fed. Reg. 44,679 (July 23, 2020), which resulted in an outpouring of media and news reports.³ Further, at the time we submitted the FOIA Request, the Census Bureau had asked Congress for a four-month extension to report the state-population totals used for

¹ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

² 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

³ See, e.g., Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics; Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241>; Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083>; Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat>.

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reapportionment to the President, extending that deadline to April 31, 2021.⁴ But on August 3, 2020, the Census Bureau reported its plan to “accelerate the completion of data collection and apportionments counts” to meet the statutory deadline of December 31, 2020.⁵ Therefore, the Brennan Center’s need to receive the agency records responsive to its request, and to receive them as soon as possible, has only become more urgent.

Additionally, the Brennan Center is an organization that is primarily engaged in the dissemination of information, and there is an urgency to inform the public about the issues surrounding the 2020 Census. The Brennan Center’s efforts in law and policy are ancillary to its mission to inform and help shape public opinion. As the Brennan Center stated in its initial request, it plans to use the information received from the request to inform the public about the government’s plans to use citizenship data in calculating the reapportionment count, and how those plans were developed. With the Census Bureau’s deadline approaching even more quickly than when the request was initially submitted, these records are urgently needed to inform the public about how the government’s plans may affect their rights.

Widespread Media Interest Raising Questions of Government Integrity

As indicated in our initial request, how the Trump administration plans to use citizenship data to affect reapportionment, in contravention of the U.S. Constitution, raises questions about the government’s integrity and is the subject of intense media speculation. Media interest surrounding the government’s activities has persisted since the Supreme Court’s ruling in June 2019. And since we submitted the July 1 FOIA Request, news articles from a variety of media sources have reported nearly daily updates on the administration’s plan to collect citizenship data in conjunction with the 2020 Census, as well as its plan to truncate the timeline for conducting census operations in time to report the state-population totals to the President by December 31, 2020. We expect the influx of media attention to these matters only to continue and expand.

The courts have not specified exactly what threshold must be met for the subject matter of a FOIA request to qualify as a “matter of widespread and exceptional media interest,” but, under any standard, that threshold is met here. Agencies entertaining a request for expedited processing on this basis cannot “simply turn a blind eye to the flurry of media attention” surrounding a topic. *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 32 (D.D.C. 2004). Even just a “handful of articles” are sufficient to establish the “exceptional

⁴ See *Statement on 2020 Census Operational Adjustments Due to COVID-19*, Release No. CB20-RTQ.16, available at <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=10000001175162>

⁵ See *Statement from U.S. Census Bureau Director Steven Dillingham: Delivery a Completed and Accurate 2020 Census Count*, Release No. CB20-RTQ.23, available at <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>.

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media interest” prong if those articles are “published in a variety of publications, and repeatedly reference the ongoing national discussion” about the issues at hand. *Id.*

Each of the articles listed below also indicates that there are possible questions about the Government’s integrity that affect public confidence. See *Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 505 (D.D.C. 2018) (requiring “the same matter that draws widespread and exceptional media interest [to] be the matter in which there exists possible questions about the government’s integrity that affect public confidence”). A possible question about government integrity is raised where the articles indicate possible ethics issues, *id.* at 508 (“The primary way to determine whether such possible questions exist is by examining the state of public coverage of the matter at issue, and whether that coverage surfaces possible ethics issues.”), or if the reports suggest the government is acting unconstitutionally, see *Am. Civil Liberties Union*, 321 F. Supp. 2d at 32 (concluding that possible questions of government integrity were raised by articles that reported on whether the issue at bar violated the constitutional rights of the public).

The articles listed below raise issues such as: (1) whether the plans revealed by the President’s July 21st Memo are unconstitutional or otherwise violate federal law; (2) whether the citizenship data the Government plans to use will be accurate and thus legitimate; (3) whether the reapportionment counting plan affects the constitutional right to representation or affects other constitutional rights; and (4) whether the Census count is being improperly politically influenced or is otherwise lacking transparency. See *Citizens for Responsibility and Ethics in Wash. v. Dep’t of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020) (“CREW”) (instructing that “possible questions” does not require proving “wrongdoing by the government”). The public has the right to know that the Census and the government’s use of Census data is lawful, ethical, and fair; any suggestion to the contrary affects public confidence in the government.

The myriad media reports raise possible questions about government integrity, come from a variety of publications, and are all related to the agency records requested in the July 1 FOIA Request. They, at minimum, include the following:

The Government Is Acting Unconstitutionally

- *Editorial: The census counts, so Congress must make sure there’s time to make the count accurate*, HOUS. CHRONICLE (Aug. 5, 2020), <https://www.houstonchronicle.com/opinion/editorials/article/Editorial-The-census-counts-so-Congress-must-15461351.php> (“These immigrants work, pay taxes and contribute to the community. They should be counted. Everyone should. That’s not just a good idea, it’s the law.”).
- Steven Shepard, *Census Bureau will finish count earlier than expected, deliver data to Trump*, POLITICO (Aug. 3, 2020), <https://www.politico.com/news/2020/08/03/census-bureau-data-trump-391146> (reporting that “[t]his latest scheme is nothing more than a

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partisan attempt at manipulating the census to benefit the president’s allies, but it plainly violates the U.S. Constitution and federal laws, and cannot stand”).

- Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics (describing three lawsuits filed challenging the government’s arbitrary and capricious decision to exclude non-citizens from the census apportionment count).
- Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html> (noting that “[t]he action directly conflicts with the traditional consensus interpretation of the Constitution”)
- Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083> (reporting on President Trump signing a memorandum “meant to exclude unauthorized immigrants from being taken into account when the government divides up congressional seats, a move that civil-rights groups swiftly vowed to challenge in court” and suggesting that the request may cause the Census Bureau to violate federal law).
- David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002> (reporting on President Trump’s July 21, 2020 memorandum noting that the “memo does not say how the U.S. Census Bureau could distinguish citizens from non-citizens – for any reason – because counters are prohibited from a citizenship question” and noting that Trump’s demand is “blatantly unconstitutional”).
- Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat> (recognizing that the President’s memo is without constitutional authority).
- Mica Rosenberg, Nick Brown & Mimi Dwyer, *Trump Orders Voting Districts to Exclude People in U.S. Illegally*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-usa-trump-migrants-census/trump-aims-to-stop-counting-of-illegal-migrants-in-redrawing-of-us-voting-maps- idUSKCN24M26U> (reporting that “U.S. census experts and lawyers say the action is legally dubious”).
- Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump->

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undocumented-immigrants-census-376241 (reporting that “Congress has not given discretion [to the President] on what you’re supposed to be counting”).

- Kevin Liptak, Maegan Vazquez, Ariane de Vogue & Catherine E. Shoichet, *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html> (reporting that Trump’s “latest attempt to weaponize the census for an attack on immigrant communities will be found unconstitutional.”).
- Dartunorro Clark, *Trump Signs Memo to Omit Undocumented Immigrants From Census Apportionment Count*, NBC NEWS (July 21, 2020), <https://www.nbcnews.com/politics/white-house/trump-sign-executive-order-aimed-omitting-undocumented-immigrants-census-count-n1234228> (quoting advocates statements that “[t]he Constitution requires that everyone in the U.S. be counted in the census. President Trump can’t pick and choose”).
- Jordan Fabian & Greg Stohr, *Trump Bars U.S. Census From Counting Undocumented Immigrants*, BLOOMBERG (July 21, 2020), <https://www.bloomberg.com/news/articles/2020-07-21/trump-order-to-bar-census-from-counting-undocumented-immigrants> (quoting DNC President Tom Perez as saying the President’s order is “an unconstitutional order that has no purpose other than to silence and disempower Latino voices and communities of color”).
- Sam Levine, *Trump Orders Undocumented Immigrants Excluded From Key Census Count*, GUARDIAN (July 21, 2020), <https://www.theguardian.com/us-news/2020/jul/21/trump-executive-order-census-undocumented-immigrants> (“The Trump administration appears to be on shaky legal ground – the US constitution requires seats in Congress to be apportioned based on the ‘whole number of persons’ counted in each state during each decennial census.”).
- Matt Stieb, *Trump Tries Last-Ditch Order to Keep Undocumented Immigrants Off Census*, NEW YORK (July 21, 2020), <https://nymag.com/intelligencer/2020/07/trump-tries-last-ditch-order-to-keep-undocumented-off-census.html> (reporting that it is likely that President Trump’s order will be overturned because “the Constitution does not determine between citizens and noncitizens”).
- Nicole Narea, *Trump Is Using the Census to Undermine Immigrants’ Political Power*, VOX (July 21, 2020), <https://www.vox.com/policy-and-politics/2020/7/21/21328714/trump-executive-order-immigration-census-2020-redistricting> (explaining that the memorandum “could also indirectly discourage immigrants who have yet to respond to the census from doing so,” and that “legal experts say that it clearly flouts the US Constitution, which requires that every person in the US — not just every citizen — be counted in the census.”).

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- Trevor Hughes, *Trump, Census Bureau Collect Driver's License Data to Check Citizenship Status of Americans*, USA TODAY (July 16, 2020), <https://www.usatoday.com/story/news/nation/2020/07/16/trump-seeks-drivers-license-data-iowa-sc-check-citizenship/5445492002/> (quoting the ACLU that the sharing of license data pursuant to Executive Order 13880 “appears to be part of a scheme motivated by an unconstitutional discriminatory purpose to dilute the political power of communities of color.”).
- John Nichols, *Trump Wants to Use 'Citizenship Data' to Gerrymander Democracy*, THE NATION (July 13, 2019), <https://www.thenation.com/article/archive/trump-census-citizenship-data-gerrymander-democracy> (reporting that the use of citizenship data, “is a threat to the basic premises of representative democracy as they have historically been understood”).
- Tess Berenson, *President Trump Backs Down on Adding Citizenship Question to Census*, TIME (July 11, 2019), <https://time.com/5624485/trump-census-citizenship-question-pivot/> (quoting Thomas Wolf, counsel with the Brennan Center, as stating “The president doesn't have the ability to unilaterally alter the census . . . The Trump administration is in a bind that it's not going to be able to escape on the substance of the justification for a citizenship question.”).

The Census Count Is Possibly Inaccurate and Possibly Illegitimate

- *What risks does ending the census count early pose?*, PBS (Aug. 9, 2020), <https://www.pbs.org/newshour/show/what-risks-does-ending-the-census-count-early-pose> (noting that the decision to shorten the Census Bureau's operations mere weeks after the memorandum calling for unauthorized immigrants to be excluded from the census numbers used to reapportion seats in Congress is “causing a lot of confusion” and asking “are there going to be enough indicators and metrics for the Census Bureau as well as outside researchers to really make that assessment of how good is the 2020 census? *How good are these results?*”).
- *Businesses to Help Wednesday as Census ends Sept. 30*, DAILY MOUNTAIN EAGLE, (Aug. 8, 2020), <http://www.mountaineagle.com/stories/businesses-to-help-wednesday-as-census-ends-sept-30,27659> (noting that Census experts and civil rights activists worry the sped-up deadlines could affect the thoroughness of the count, which determines how many congressional districts each state gets).
- Michael Wines, *At the Census Bureau, a Technical Memo Raises Alarms Over Politics*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/us/2020-census-undocumented-immigrants.html> (reporting that an internal Census Bureau memo issued on August 3, 2020 ordered an internal task force to explore statistical methods of compiling an accurate estimate of noncitizens in an effort to carry out President Trump's July mandate to exclude undocumented residents from the apportionment count).

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- Vania Patino *Census count finishing early may cause undercount in some TX Panhandle counties*, KLTV (Aug. 6, 2020), <https://www.kltv.com/2020/08/07/census-count-finishing-early-may-cause-undercount-some-tx-panhandle-counties/> (reporting that the Census Bureau’s new deadline “seems impossible” and that it is essential for the numbers to be correct for the representation to be correct).
- Michael Wines & Richard Fausset, *With Census Count Finishing Early, Fears of a Skewed Tally Rise*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html> (quoting former Census Bureau directors warning that an earlier deadline would “result in seriously incomplete enumerations in many areas across our country.”).
- *Census to Finish Count Month Early*, WBUR (Aug. 4, 2020), <https://www.wbur.org/hereandnow/2020/08/04/census-count-cut-short> (noting that many people fear that the Census’s Bureau’s shortened operations period will reduce the accuracy of the population count).
- Hansi Lo Wang, *Census Cuts All Counting Efforts Short by a Month*, NPR (Aug. 3, 2020), <https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30> (“These last-minute changes to the constitutionally mandated count of every person living in the U.S. threaten the accuracy of population numbers used to determine the distribution of political representation and federal funding for the next decade.”).
- Dudley L. Poston, Jr. and Teresa A. Sullivan, *Excluding Undocumented Immigrants from the 2020 U.S. House Apportionment*, UVA CTR. FOR POLITICS (July 30, 2020), <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment> (“[I]t is not clear whether the Secretary of Commerce could produce acceptable numbers of undocumented residents according to the timetable the new memorandum requires.”).
- Adam Shaw & John Roberts, *Trump Signs Order to Prevent Illegal Immigrants from Being Counted in Redrawing Of Voting Districts*, FOX NEWS (July 21, 2020), <https://www.foxnews.com/politics/trump-to-sign-order-illegal-immigrants-voting-districts> (noting that it is “not clear how the administration would determine who was in the country illegally” for purposes of determining reapportionment).
- Brett Samuels & Rafael Bernal, *Trump Aims To Bar Undocumented Immigrants From Counting Toward House Representation*, HILL (July 21, 2020), <https://thehill.com/latino/508314-trump-aims-to-bar-undocumented-immigrants-from-counting-toward-house-representation> (suggesting that the administration may be using “questionable social science data techniques” including sampling, which was struck down by the Supreme Court in 1999).
- Chris Sommerfeldt, *Trump Moves to Exclude Undocumented Immigrants From Census Data on Voting Districts*, N.Y. DAILY NEWS (July 21, 2020), <https://www.nydailynews.com>.

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com/news/politics/ny-trump-memo-immigrants-voting-census-20200721-5rexsyrdbbd3vp7gqq2seu4of4-story.html (noting that “it’s unclear how the government would be able to determine whether a resident is undocumented, since the Supreme Court blocked the Trump administration last year from adding a citizenship question to the 2020 census.”).

- Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdff1af38_story.html (noting that the administrations appointment of two “high-level political appointees to the Census Bureau ... rais[ed] concern that the new hires could attempt to influence the count”).
- Colin A. Young, *Trump Seeks to Squeeze Immigrants Out of Apportionment*, WWLP-22NEWS (July 21, 2020), <https://www.wwlp.com/news/state-politics/trump-seeks-to-squeeze-immigrants-out-of-apportionment/> (reporting that “[t]he Census, throughout our history, has always been an accurate, even count. That’s what it’s been irrespective of which party controlled Congress, controlled the presidency, and [President Trump] clearly has no such qualms about accuracy or honesty.”).
- Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html> (reporting that veteran Census Bureau officials are “worried that the new appointees will seek to skew the 2020 census totals in a similarly inaccurate way, accomplishing what the battle over the citizenship question failed to achieve.”).
- Hansi Lo Wang, *Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen> (“Many voting rights advocates, however, are skeptical about the accuracy of data that would be generated from historical records that often contain out-of-date information, especially about whether a person is currently a U.S. citizen.”).
- Aaron Boyd, *How Census is Building a Citizenship Database Covering Everyone Living in the U.S.*, NEXTGOV (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275/> (quoting a statement from the Census Bureau’s website about citizenship data stating “[w]e are still receiving and analyzing data from external sources, including federal and state administrative records, and require additional time for evaluation”).
- Tara Bahrapour, *Census Bureau’s Request for Citizenship Data From DMVs Raises Privacy, Accuracy Concerns*, WASH. POST (Oct. 17, 2019), <https://www.washingtonpost.com/local/social-issues/census-bureaus-request-for-citizenship-data-from-dmvs-raises->

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privacy-accuracy-concerns/2019/10/17/aa8771f2-f114-11e9-89eb-ec56cd414732_story.html (reporting that “DMV records [requested by the Executive Order] are not necessarily updated when a person naturalizes, and said relying on such data would result in undercounts of people who became citizens after getting driver’s licenses or state IDs — a group that includes a higher proportion of minorities than the general population.”).

- Nicole Narea, *Trump is Still Trying to Collect Citizenship Data For Redistricting*, VOX (Oct. 17, 2019), <https://www.vox.com/policy-and-politics/2019/10/17/20918989/trump-2020-census-citizenship-data-redistricting-drivers-license> (quoting Dale Ho, director of the ACLU’s Voting Rights Project, as saying that state’s Department of Motor Vehicles data is concerning because it is “highly unreliable due to poor database protocols and stale citizenship data”).
- Chris Dunn, *The Long Fight to Protect the 2020 Census from Trump*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/opinion/long-fight-protect-2020-census-trump> (“A worrisome threat to the legitimacy of this process lies with the step where the President is to certify census results to Congress.”).

An Inaccurate Reapportionment Affects Persons’ Rights

- Doug Thompson, *Time crunch has census-takers in Arkansas racing the clock*, (Aug. 9, 2020), ARK. DEMOCRAT-GAZETTE, <https://www.arkansasonline.com/news/2020/aug/09/census-count-time-cut-short-advocates-say/?latest> (affecting rights because “[i]f a county in Arkansas has a lower-than-accurate census count, it loses out on representation”).
- Megan Tomasic, *Earlier census deadline could cause W.Pa. officials to accelerate counts*, TRIB TOTAL MEDIA (July 31, 2020), <https://triblive.com/local/regional/local-leaders-respond-to-date-change-for-in-person-census-count-collection/> (estimating that the decision to cut short in-person counting efforts could result in “catastrophic outcomes for cities and towns across the country who rely on federal funding and congressional apportionment”).
- Katie Rogers, Adam Liptak, Michael Crowley & Michael Wines, *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html> (reporting on President Trump’s July 11 Rose Garden announcement that the administration’s goal is to obtain data on citizenship to eliminate noncitizens from the population bases used to draw political boundaries).
- Dan Mangan & Tucker Higgins, *Trump Abandons Fight to Put Citizenship Question on Census, Says He Can Get Data From Existing Records*, CNBC (July 11, 2019), <https://www.cnn.com/2019/07/11/trump-abandons-fight-to-put-citizenship-question-on-census.html> (quoting Dale Ho, director at the ACLU, as stating President Trump “lost in

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the Supreme Court, which saw through his lie about needing the question for the Voting Rights Act . . . It is clear he simply wanted to sow fear in immigrant communities and turbocharge Republican gerrymandering efforts by diluting the political influence of Latino communities.”).

- Jeff Mason & David Shepardson, *Trump Drops Census Citizenship Question, Vows to Get Data From Government*, REUTERS (July 11, 2019), <https://www.reuters.com/article/us-usa-census/trump-drops-census-citizenship-question-vows-to-get-data-from-government-idUSKCN1U61D9> (quoting Michael Waldman, president of the Brennan Center, as saying that the Brennan Center would challenge “any administration move to violate the clear and strong rules protecting the privacy of everyone’s responses, including the rules barring the use of personal census data to conduct law or immigration enforcement activities.”).

Questions and Concerns That the Census Is Being Improperly Politically Influenced

- Hansi Lo Wang, *‘Not Enough Time’: Census Workers Fear Rushing Count Could Botch Results*, (Aug. 11, 2020), <https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results> (quoting a Census field worker as saying about the administration’s plans “It does not feel like we have the same mission in mind. We’re trying to get a complete count. I’m not sure everyone on the team has the same mission.” Also quoting a Senator as saying, “I believe that this deviation in schedule is driven not by expert opinions of career Census Bureau employees but by external pressure from the White House and the Department of Commerce for perceived political gain.”).
- Hansi Lo Wang, *Census Door Knocking Cut a Month Short Amid Pressure to Finish Count*, NPR (July 30, 2020), <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> (“The director of the Census Bureau testified that he first learned about Trump’s plans to attempt to exclude unauthorized immigrants from the census numbers used to reapportion seats in Congress not from any internal discussions, but from a news report ‘late on a Friday’ that said ‘such a directive may be coming down.’”).
- Michael Wines, *New Census Worry: A Rushed Count Could Mean a Botched One*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/us/trump-census.html> (reporting that despite admitting that “meeting that deadline is impossible,” “the White House declined to address questions about its census plans. Responding to a reporter’s questions, the Census Bureau issued a statement on Monday that neither confirmed nor denied an effort to hasten the completion of the count and the delivery of reapportionment figures.”).
- Tara Bahrapour, *Lawmakers, inspector general demand answers on Census Bureau political appointees*, WASH. POST (July 16, 2020), <https://www.washingtonpost.com/>

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local/social-issues/lawmakers-inspector-general-demand-answers-on-census-bureau-political-appointees/2020/07/16/6c355046-c656-11ea-8ffe-372be8d82298_story.html (describing several concerns over the addition of two partisan appointees to the Census Bureau staff because the move could “politicize the decennial census, which is used to determine congressional apportionment”).

- Nikita Lalwani & Rachel Brown, *Donald Trump’s Efforts to Distort the Census Have Started Back Up*, SLATE (July 17, 2020), <https://slate.com/news-and-politics/2020/07/donald-trump-census-citizenship-question-executive-order-scotus.html> (“The American Statistical Association decried the news [of two new partisan appointees] as creating ‘the perception—if not reality—of improper political influence.’”).
- Adrian Sainz, *Commerce Department IG Seeks Info on 2 Census Hirings*, WASH. POST (July 8, 2020), https://www.washingtonpost.com/national/commerce-department-ig-seeks-info-on-2-census-hirings/2020/07/08/c5579c3a-c14f-11ea-8908-68a2b9eae9e0_story.html (citing Thomas Wolf, a counsel with the Brennan Center, that the two new Census Bureau employees appointed by the Trump administration raise concerns that the administration may try to violate longstanding protections ensuring that data is kept confidential and secure).
- Michael Wines, *Knocked Off Track by Coronavirus, Census Announces Delay in 2020 Count*, N.Y. TIMES (Apr. 13, 2020), <https://www.nytimes.com/2020/04/13/us/census-coronavirus-delay.html> (“[A] number of experts [] said that the aura of secrecy surrounding this census, in sharp contrast to previous ones, limited support for the count and raised questions about what, if anything, was being concealed.”).
- Jeffrey Mervis, *Why the U.S. Census Bureau Could Have Trouble Complying With Trump’s Order to Count Citizens*, SCIENCE (Sept. 16, 2019), <https://www.sciencemag.org/news/2019/09/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens> (reporting that researchers fear complying with President Trump’s Executive Order could “tarnish” the Census Bureau’s “stellar reputation for nonpartisanship”).
- Hansi Lo Wang, *Trump Wants Citizenship Data Released But States Haven’t Asked Census For That*, NPR (Sept. 11, 2019), <https://www.npr.org/2019/09/11/759510775/trump-wants-citizenship-data-released-but-states-havent-asked-census-for-it> (reporting that Thomas Hofeller, a GOP redistricting strategist, concluded that detailed citizenship information could allow for redrawing of voting districts that would be “advantageous to Republicans and Non-Hispanic Whites,” but that the Trump Administration argues Hofeller’s study played little role in advocating for a citizenship question).

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- Hansi Lo Wang, *Do Trump Officials Plan to Break Centuries of Precedent in Divvying Up Congress?*, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress> (reporting that the Census Bureau failed to provide clear answers as to whether citizenship would be used in the 2020 Census and factor into apportionment).

The abundance of reporting from an array of media outlets listed above overwhelmingly establishes that the July 1 FOIA Request satisfies the exceptional media interest requirement because each article raises a possible question about government integrity that affects public confidence.

For the reasons set forth above, the Brennan Center has established, and reiterates here, that there is widespread and exceptional media interest surrounding the topics in its July 1 FOIA Request. Therefore, expedited processing must be granted.

The Brennan Center Is Primarily Engaged in Disseminating Information

The Brennan Center should be granted expedited processing as it is an organization “primarily engaged in disseminating information,” and there is “urgency to inform the public” about the issues their request identifies. 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

In *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, the court concluded that CREW⁶ was primarily engaged in disseminating information based on its assertion that its “primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials.” *CREW*, 436 F. Supp. 3d at 360–61. Similarly, the July 1 FOIA Request specifies that the Brennan Center is primarily a “cutting-edge communications hub, shaping opinion by taking our message directly to the press and public,” *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed August 13, 2020). The Brennan Center works first to inform the public of injustice in society and then uses its expertise to advance its policies. The legal and advocacy work the Brennan Center does has the purpose of creating a public record of important issues, all of which supports the notion that the Center is primarily engaged in disseminating information.

Following President Trump issuing the July 21 Memorandum, a multitude of lawsuits were filed challenging the constitutionality of the administration’s plan. As the July 1 Request specified, the Brennan Center will use the agency records received through the request to “explain to the public how citizenship data may be used to calculate the apportionment.” Exhibit

⁶ CREW’s website indicates that they “use[] aggressive legal action, in-depth research, and bold communications to reduce the influence of money in politics and help foster a government that is ethical and accountable.” *Who We Are, About Us*, CREW, <https://www.citizensforethics.org/who-we-are> (last accessed August 10, 2020).

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A, at 7. Access to the requested documents is essential for the public to assess the Administration's plans for using citizenship for the 2020 Census count.

Additionally, the Brennan Center has an online library with thousands of publications, articles, and reports that are publicly available,⁷ including 75 that are dedicated solely to the census such as the following:

- Thomas Wolf, Kelly Percival, and Brianna Cea, *Getting the Count Right: Key Context for the 2020 Census*, Brennan Ctr. (March 31, 2020), <https://www.brennancenter.org/sites/default/files/2020-03/CensusPrimer.pdf>.
- Kelly Percival, *Strong Confidentiality Laws Protect All Data the Census Bureau Collects*, Brennan Ctr. (Dec. 5, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/strong-confidentiality-laws-protect-all-data-census-bureau-collects>.
- Kelly Percival, *Trump Administration Abandons Citizenship Question*, Brennan Ctr. (July 12, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/trump-administration-abandons-citizenship-question>.
- Kelly Percival & Brianna Cea, *Annotated Guide to the Amicus Briefs in the Supreme Court's Citizenship Question Case*, Brennan Ctr. (Apr. 11, 2019), <https://www.brennancenter.org/our-work/court-cases/annotated-guide-amicus-briefs-supreme-courts-citizenship-question-case>.
- Thomas Wolf & Brianna Cea, *A Critical History of the U.S. Census & Citizenship Questions*, Brennan Ctr. (Apr. 2, 2019), <https://www.brennancenter.org/our-work/research-reports/critical-history-us-census-citizenship-questions>.
- Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.
- Brianna Cea, *Potential Shifts in Political Power After the 2020 Census*, Brennan Ctr. (March 27, 2018), <https://www.brennancenter.org/our-work/research-reports/potential-shifts-political-power-after-2020-census>.

⁷ *Library: A Fair & Accurate Census*, Brennan Ctr., <https://www.brennancenter.org/library/?issue=22&subissue=60&>.

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For the foregoing reasons, we request that you promptly grant our expedited processing request and produce agency records responsive to the July 1 FOIA Request. Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

Respectfully,

/s/ Patrick Carome

Patrick Carome
Caitlin Monahan
Mikayla C. Foster
Jared V. Grubow
Rieko H. Shepherd
Counsel for Requestors

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CERTIFICATION

I hereby certify, on behalf of the Brennan Center and pursuant to 5 U.S.C. § 552(6)(E)(vi), that the content of this letter, as well as the statements supporting the Brennan Center's request for expedition set forth in the original FOIA Request, are true and correct to the best of my and the Brennan Center's knowledge and belief.

/s/ Patrick Carome

Patrick Carome

Exhibit A

WILMERHALE

July 1, 2020

By Mail

United States Department of Justice
Office of the Deputy Attorney General

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
6th Floor
441 G. Street, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Sir:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestor”), we respectfully request all records in the possession of the Department of Justice, Office of the Deputy Attorney General, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation

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- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared W. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
120 Broadway
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome
Patrick Carome
Mikayla C. Foster
Jared V. Grubow
Christian Ronald
Rieko H. Shepherd
Counsel for Requestors

Exhibit B



U.S. Department of Justice
 Office of Information Policy
 Sixth Floor
 441 G Street, NW
 Washington, DC 20530-0001

Telephone: (202) 514-3642

July 23, 2020

Patrick Carome
 c/o Jared Grubow
 WilmerHale
 1875 Pennsylvania Avenue NW
 Washington, DC 20006
jared.grubow@wilmerhale.com

Re: FOIA-2020-01688
 FOIA-2020-01689
 FOIA-2020-01690
 FOIA-2020-01691
 DRH:VAV:GMG

Dear Patrick Carome:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) requests dated July 1, 2020 and received in this Office on July 13, 2020, in which you requested records from the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, and Legal Policy pertaining to the 2020 Census and use of citizenship status data collected pursuant to Executive Order 13880, dating from July 27, 2019. Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some delay in the processing of your requests.

Below are the tracking numbers associated with the requests you submitted:

FOIA-2020-01688	Office of the Attorney General
FOIA-2020-01689	Office of the Deputy Attorney General
FOIA-2020-01690	Office of the Associate Attorney General
FOIA-2020-01691	Office of Legal Policy

You have requested expedited processing of your requests pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(e)(1)(ii) (2018). Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. This Office cannot identify a particular urgency to inform the public about an actual or alleged federal government activity beyond the public's right to know about government activities generally.

You have also requested expedited processing of your requests pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See *id.* § 16.5(e)(2). The Director has determined

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that your request for expedited processing should be denied. Please be advised that, although your requests for expedited processing has been denied, it has been assigned to an analyst in this Office and our processing of it has been initiated.

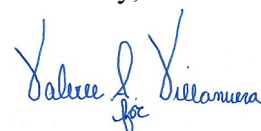
To the extent that your requests require a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of material, your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your requests. At this time we have assigned your requests to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your requests to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for your requests.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your requests, you may contact the analyst handing your request, Georgianna Gilbeaux, by telephone at the above number or you may write to them at the above address. You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your requests at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, 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, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to your requests for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your requests. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,



Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit P

Office of Legal Counsel

Department of Justice

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August 13, 2020

By Electronic Mail

United States Department of Justice
Office of Legal Counsel

Melissa Golden
FOIA Public Liaison
Office of Legal Counsel
Room 5511, 950 Pennsylvania Avenue, NW
Department of Justice
Washington, DC 20530-0001

Re: July 1, 2020 Brennan Center for Justice at NYU School of Law's Submission of Freedom of Information Act Request, FOIA Tracking No. FY20-113

Dear Ms. Golden:

On July 1, 2020, our office delivered a Freedom of Information Act ("FOIA") request on behalf of our client, the Brennan Center for Justice at NYU School of Law (the "Brennan Center" or the "Requestors") to the United States Department of Justice, Office of Legal Counsel via electronic mail to USDOJ-OfficeofLegalCounsel@usdoj.gov (the "July 1 FOIA Request"). The July 1 FOIA Request is attached hereto as "Exhibit A."

On July 10, 2020, you denied our request for expedited processing. Although we believe your denial was incorrect at that time, since then the political and media environment surrounding our request has substantially shifted and grounds for expedition have only strengthened. As such, and in lieu of an appeal, we submit this letter to renew and ask for reconsideration of our request for expedited processing. This letter underscores the urgency and time sensitivity of our July 1 FOIA Request and supplements the record with additional support for expedition. Please respond to this renewed request for expedition within 10 calendar days, or by the latest August 24, 2020. 5 U.S.C. § 552(a)(6)(E)(ii)(I); 28 C.F.R. § 16.5.(e)(4).

Renewed Request for Expedited Processing

As we explained in the July 1 FOIA Request, the Brennan Center requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e). The Department of Justice must process requests on an expedited basis when either (1) "[a] matter of widespread and exceptional media interest involving questions about the Government's integrity which

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affect public confidence”¹ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”² Exhibit A, at 5. We write to emphasize that expedited processing should be granted because there is widespread and exceptional media interest surrounding the 2020 Census, specifically as it relates to its uses for reapportionment, and the reporting by news organizations on the 2020 Census has also raised possible questions about the government’s integrity that affect public confidence. Further, as an organization primarily engaged in disseminating information, the Brennan Center urgently needs to inform the public of the information we are requesting.

Since the FOIA Request was filed, the exceptional interest surrounding the 2020 Census and the apportionment process has exploded. On July 21, 2020, President Trump issued a “Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census,” 85 Fed. Reg. 44,679 (July 23, 2020), which resulted in an outpouring of media and news reports.³ Further, at the time we submitted the FOIA Request, the Census Bureau had asked Congress for a four-month extension to report the state-population totals used for reapportionment to the President, extending that deadline to April 31, 2021.⁴ But on August 3, 2020, the Census Bureau reported its plan to “accelerate the completion of data collection and apportionments counts” to meet the statutory deadline of December 31, 2020.⁵ Therefore, the

¹ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

² 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

³ See, e.g., Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics; Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241>; Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083>; Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat>.

⁴ See *Statement on 2020 Census Operational Adjustments Due to COVID-19*, Release No. CB20-RTQ.16, available at <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=10000001175162>

⁵ See *Statement from U.S. Census Bureau Director Steven Dillingham: Delivery a Completed and Accurate 2020 Census Count*, Release No. CB20-RTQ.23, available at <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>.

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Brennan Center's need to receive the agency records responsive to its request, and to receive them as soon as possible, has only become more urgent.

Additionally, the Brennan Center is an organization that is primarily engaged in the dissemination of information, and there is an urgency to inform the public about the issues surrounding the 2020 Census. The Brennan Center's efforts in law and policy are ancillary to its mission to inform and help shape public opinion. As the Brennan Center stated in its initial request, it plans to use the information received from the request to inform the public about the government's plans to use citizenship data in calculating the reapportionment count, and how those plans were developed. With the Census Bureau's deadline approaching even more quickly than when the request was initially submitted, these records are urgently needed to inform the public about how the government's plans may affect their rights.

Widespread Media Interest Raising Questions of Government Integrity

As indicated in our initial request, how the Trump administration plans to use citizenship data to affect reapportionment, in contravention of the U.S. Constitution, raises questions about the government's integrity and is the subject of intense media speculation. Media interest surrounding the government's activities has persisted since the Supreme Court's ruling in June 2019. And since we submitted the July 1 FOIA Request, news articles from a variety of media sources have reported nearly daily updates on the administration's plan to collect citizenship data in conjunction with the 2020 Census, as well as its plan to truncate the timeline for conducting census operations in time to report the state-population totals to the President by December 31, 2020. We expect the influx of media attention to these matters only to continue and expand.

The courts have not specified exactly what threshold must be met for the subject matter of a FOIA request to qualify as a "matter of widespread and exceptional media interest," but, under any standard, that threshold is met here. Agencies entertaining a request for expedited processing on this basis cannot "simply turn a blind eye to the flurry of media attention" surrounding a topic. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 32 (D.D.C. 2004). Even just a "handful of articles" are sufficient to establish the "exceptional media interest" prong if those articles are "published in a variety of publications, and repeatedly reference the ongoing national discussion" about the issues at hand. *Id.*

Each of the articles listed below also indicates that there are possible questions about the Government's integrity that affect public confidence. *See Oversight v. Dep't of Justice*, 292 F. Supp. 3d 501, 505 (D.D.C. 2018) (requiring "the same matter that draws widespread and exceptional media interest [to] be the matter in which there exists possible questions about the government's integrity that affect public confidence"). A possible question about government integrity is raised where the articles indicate possible ethics issues, *id.* at 508 ("The primary way to determine whether such possible questions exist is by examining the state of public coverage

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of the matter at issue, and whether that coverage surfaces possible ethics issues.”), or if the reports suggest the government is acting unconstitutionally, *see Am. Civil Liberties Union*, 321 F. Supp. 2d at 32 (concluding that possible questions of government integrity were raised by articles that reported on whether the issue at bar violated the constitutional rights of the public).

The articles listed below raise issues such as: (1) whether the plans revealed by the President’s July 21st Memo are unconstitutional or otherwise violate federal law; (2) whether the citizenship data the Government plans to use will be accurate and thus legitimate; (3) whether the reapportionment counting plan affects the constitutional right to representation or affects other constitutional rights; and (4) whether the Census count is being improperly politically influenced or is otherwise lacking transparency. *See Citizens for Responsibility and Ethics in Wash. v. Dep’t of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020) (“CREW”) (instructing that “possible questions” does not require proving “wrongdoing by the government”). The public has the right to know that the Census and the government’s use of Census data is lawful, ethical, and fair; any suggestion to the contrary affects public confidence in the government.

The myriad media reports raise possible questions about government integrity, come from a variety of publications, and are all related to the agency records requested in the July 1 FOIA Request. They, at minimum, include the following:

The Government Is Acting Unconstitutionally

- *Editorial: The census counts, so Congress must make sure there’s time to make the count accurate*, HOUS. CHRONICLE (Aug. 5, 2020), <https://www.houstonchronicle.com/opinion/editorials/article/Editorial-The-census-counts-so-Congress-must-15461351.php> (“These immigrants work, pay taxes and contribute to the community. They should be counted. Everyone should. That’s not just a good idea, it’s the law.”).
- Steven Shepard, *Census Bureau will finish count earlier than expected, deliver data to Trump*, POLITICO (Aug. 3, 2020), <https://www.politico.com/news/2020/08/03/census-bureau-data-trump-391146> (reporting that “[t]his latest scheme is nothing more than a partisan attempt at manipulating the census to benefit the president’s allies, but it plainly violates the U.S. Constitution and federal laws, and cannot stand”).
- Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics (describing three lawsuits filed challenging the government’s arbitrary and capricious decision to exclude non-citizens from the census apportionment count).
- Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/>

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07/21/us/politics/trump-immigrants-census-redistricting.html (noting that “[t]he action directly conflicts with the traditional consensus interpretation of the Constitution”)

- Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083> (reporting on President Trump signing a memorandum “meant to exclude unauthorized immigrants from being taken into account when the government divides up congressional seats, a move that civil-rights groups swiftly vowed to challenge in court” and suggesting that the request may cause the Census Bureau to violate federal law).
- David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002> (reporting on President Trump’s July 21, 2020 memorandum noting that the “memo does not say how the U.S. Census Bureau could distinguish citizens from non-citizens – for any reason – because counters are prohibited from a citizenship question” and noting that Trump’s demand is “blatantly unconstitutional”).
- Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat> (recognizing that the President’s memo is without constitutional authority).
- Mica Rosenberg, Nick Brown & Mimi Dwyer, *Trump Orders Voting Districts to Exclude People in U.S. Illegally*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-usa-trump-migrants-census/trump-aims-to-stop-counting-of-illegal-migrants-in-redrawing-of-us-voting-maps-idUSKCN24M26U> (reporting that “U.S. census experts and lawyers say the action is legally dubious”).
- Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241> (reporting that “Congress has not given discretion [to the President] on what you’re supposed to be counting”).
- Kevin Liptak, Maegan Vazquez, Ariane de Vogue & Catherine E. Shoichet, *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html> (reporting that Trump’s “latest attempt to weaponize the census for an attack on immigrant communities will be found unconstitutional.”).
- Dartunorro Clark, *Trump Signs Memo to Omit Undocumented Immigrants From Census Apportionment Count*, NBC NEWS (July 21, 2020), <https://www.nbcnews.com/politics/white-house/trump-sign-executive-order-aimed-omitting-undocumented->

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immigrants-census-count-n1234228 (quoting advocates statements that “[t]he Constitution requires that everyone in the U.S. be counted in the census. President Trump can’t pick and choose”).

- Jordan Fabian & Greg Stohr, *Trump Bars U.S. Census From Counting Undocumented Immigrants*, BLOOMBERG (July 21, 2020), <https://www.bloomberg.com/news/articles/2020-07-21/trump-order-to-bar-census-from-counting-undocumented-immigrants> (quoting DNC President Tom Perez as saying the President’s order is “an unconstitutional order that has no purpose other than to silence and disempower Latino voices and communities of color”).
- Sam Levine, *Trump Orders Undocumented Immigrants Excluded From Key Census Count*, GUARDIAN (July 21, 2020), <https://www.theguardian.com/us-news/2020/jul/21/trump-executive-order-census-undocumented-immigrants> (“The Trump administration appears to be on shaky legal ground – the US constitution requires seats in Congress to be apportioned based on the ‘whole number of persons’ counted in each state during each decennial census.”).
- Matt Stieb, *Trump Tries Last-Ditch Order to Keep Undocumented Immigrants Off Census*, NEW YORK (July 21, 2020), <https://nymag.com/intelligencer/2020/07/trump-tries-last-ditch-order-to-keep-undocumented-off-census.html> (reporting that it is likely that President Trump’s order will be overturned because “the Constitution does not determine between citizens and noncitizens”).
- Nicole Narea, *Trump Is Using the Census to Undermine Immigrants’ Political Power*, VOX (July 21, 2020), <https://www.vox.com/policy-and-politics/2020/7/21/21328714/trump-executive-order-immigration-census-2020-redistricting> (explaining that the memorandum “could also indirectly discourage immigrants who have yet to respond to the census from doing so,” and that “legal experts say that it clearly flouts the US Constitution, which requires that every person in the US — not just every citizen — be counted in the census.”).
- Trevor Hughes, *Trump, Census Bureau Collect Driver’s License Data to Check Citizenship Status of Americans*, USA TODAY (July 16, 2020), <https://www.usatoday.com/story/news/nation/2020/07/16/trump-seeks-drivers-license-data-iowa-sc-check-citizenship/5445492002/> (quoting the ACLU that the sharing of license data pursuant to Executive Order 13880 “appears to be part of a scheme motivated by an unconstitutional discriminatory purpose to dilute the political power of communities of color.”).
- John Nichols, *Trump Wants to Use ‘Citizenship Data’ to Gerrymander Democracy*, THE NATION (July 13, 2019), <https://www.thenation.com/article/archive/trump-census-citizenship-data-gerrymander-democracy> (reporting that the use of citizenship data, “is a

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threat to the basic premises of representative democracy as they have historically been understood”).

- Tess Berenson, *President Trump Backs Down on Adding Citizenship Question to Census*, TIME (July 11, 2019), <https://time.com/5624485/trump-census-citizenship-question-pivot/> (quoting Thomas Wolf, counsel with the Brennan Center, as stating “The president doesn’t have the ability to unilaterally alter the census . . . The Trump administration is in a bind that it’s not going to be able to escape on the substance of the justification for a citizenship question.”).

The Census Count Is Possibly Inaccurate and Possibly Illegitimate

- *What risks does ending the census count early pose?*, PBS (Aug. 9, 2020), <https://www.pbs.org/newshour/show/what-risks-does-ending-the-census-count-early-pose> (noting that the decision to shorten the Census Bureau’s operations mere weeks after the memorandum calling for unauthorized immigrants to be excluded from the census numbers used to reapportion seats in Congress is “causing a lot of confusion” and asking “are there going to be enough indicators and metrics for the Census Bureau as well as outside researchers to really make that assessment of how good is the 2020 census? *How good are these results?*”).
- *Businesses to Help Wednesday as Census ends Sept. 30*, DAILY MOUNTAIN EAGLE, (Aug. 8, 2020), <http://www.mountaineagle.com/stories/businesses-to-help-wednesday-as-census-ends-sept-30,27659> (noting that Census experts and civil rights activists worry the sped-up deadlines could affect the thoroughness of the count, which determines how many congressional districts each state gets).
- Michael Wines, *At the Census Bureau, a Technical Memo Raises Alarms Over Politics*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/us/2020-census-undocumented-immigrants.html> (reporting that an internal Census Bureau memo issued on August 3, 2020 ordered an internal task force to explore statistical methods of compiling an accurate estimate of noncitizens in an effort to carry out President Trump’s July mandate to exclude undocumented residents from the apportionment count).
- Vania Patino *Census count finishing early may cause undercount in some TX Panhandle counties*, KLTN (Aug. 6, 2020), <https://www.kltv.com/2020/08/07/census-count-finishing-early-may-cause-undercount-some-tx-panhandle-counties/> (reporting that the Census Bureau’s new deadline “seems impossible” and that it is essential for the numbers to be correct for the representation to be correct).
- Michael Wines & Richard Fausset, *With Census Count Finishing Early, Fears of a Skewed Tally Rise*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html> (quoting former Census Bureau directors warning that an earlier deadline would “result in seriously incomplete enumerations in many areas across our country.”).

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- *Census to Finish Count Month Early*, WBUR (Aug. 4, 2020), <https://www.wbur.org/hereandnow/2020/08/04/census-count-cut-short> (noting that many people fear that the Census’s Bureau’s shortened operations period will reduce the accuracy of the population count).
- Hansi Lo Wang, *Census Cuts All Counting Efforts Short by a Month*, NPR (Aug. 3, 2020), <https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30> (“These last-minute changes to the constitutionally mandated count of every person living in the U.S. threaten the accuracy of population numbers used to determine the distribution of political representation and federal funding for the next decade.”).
- Dudley L. Poston, Jr. and Teresa A. Sullivan, *Excluding Undocumented Immigrants from the 2020 U.S. House Apportionment*, UVA CTR. FOR POLITICS (July 30, 2020), <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment> (“[I]t is not clear whether the Secretary of Commerce could produce acceptable numbers of undocumented residents according to the timetable the new memorandum requires.”).
- Adam Shaw & John Roberts, *Trump Signs Order to Prevent Illegal Immigrants from Being Counted in Redrawing Of Voting Districts*, FOX NEWS (July 21, 2020), <https://www.foxnews.com/politics/trump-to-sign-order-illegal-immigrants-voting-districts> (noting that it is “not clear how the administration would determine who was in the country illegally” for purposes of determining reapportionment).
- Brett Samuels & Rafael Bernal, *Trump Aims To Bar Undocumented Immigrants From Counting Toward House Representation*, HILL (July 21, 2020), <https://thehill.com/latino/508314-trump-aims-to-bar-undocumented-immigrants-from-counting-toward-house-representation> (suggesting that the administration may be using “questionable social science data techniques” including sampling, which was struck down by the Supreme Court in 1999).
- Chris Sommerfeldt, *Trump Moves to Exclude Undocumented Immigrants From Census Data on Voting Districts*, N.Y. DAILY NEWS (July 21, 2020), <https://www.nydailynews.com/news/politics/ny-trump-memo-immigrants-voting-census-20200721-5rexysrdbbd3vp7gqq2seu4of4-story.html> (noting that “it’s unclear how the government would be able to determine whether a resident is undocumented, since the Supreme Court blocked the Trump administration last year from adding a citizenship question to the 2020 census.”).

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- Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdff1af38_story.html (noting that the administrations appointment of two “high-level political appointees to the Census Bureau ... rais[ed] concern that the new hires could attempt to influence the count”).
- Colin A. Young, *Trump Seeks to Squeeze Immigrants Out of Apportionment*, WWLP-22NEWS (July 21, 2020), <https://www.wwlp.com/news/state-politics/trump-seeks-to-squeeze-immigrants-out-of-apportionment/> (reporting that “[t]he Census, throughout our history, has always been an accurate, even count. That’s what it’s been irrespective of which party controlled Congress, controlled the presidency, and [President Trump] clearly has no such qualms about accuracy or honesty.”).
- Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html> (reporting that veteran Census Bureau officials are “worried that the new appointees will seek to skew the 2020 census totals in a similarly inaccurate way, accomplishing what the battle over the citizenship question failed to achieve.”).
- Hansi Lo Wang, *Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen> (“Many voting rights advocates, however, are skeptical about the accuracy of data that would be generated from historical records that often contain out-of-date information, especially about whether a person is currently a U.S. citizen.”).
- Aaron Boyd, *How Census is Building a Citizenship Database Covering Everyone Living in the U.S.*, NEXTGOV (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275/> (quoting a statement from the Census Bureau’s website about citizenship data stating “[w]e are still receiving and analyzing data from external sources, including federal and state administrative records, and require additional time for evaluation”).
- Tara Bahrapour, *Census Bureau’s Request for Citizenship Data From DMVs Raises Privacy, Accuracy Concerns*, WASH. POST (Oct. 17, 2019), https://www.washingtonpost.com/local/social-issues/census-bureaus-request-for-citizenship-data-from-dmvs-raises-privacy-accuracy-concerns/2019/10/17/aa8771f2-f114-11e9-89eb-ec56cd414732_story.html (reporting that “DMV records [requested by the Executive Order] are not necessarily updated when a person naturalizes, and said relying on such data would result in undercounts of people who became citizens after getting driver’s

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licenses or state IDs — a group that includes a higher proportion of minorities than the general population.”).

- Nicole Narea, *Trump is Still Trying to Collect Citizenship Data For Redistricting*, VOX (Oct. 17, 2019), <https://www.vox.com/policy-and-politics/2019/10/17/20918989/trump-2020-census-citizenship-data-redistricting-drivers-license> (quoting Dale Ho, director of the ACLU’s Voting Rights Project, as saying that state’s Department of Motor Vehicles data is concerning because it is “highly unreliable due to poor database protocols and stale citizenship data”).
- Chris Dunn, *The Long Fight to Protect the 2020 Census from Trump*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/opinion/long-fight-protect-2020-census-trump> (“A worrisome threat to the legitimacy of this process lies with the step where the President is to certify census results to Congress.”).

An Inaccurate Reapportionment Affects Persons’ Rights

- Doug Thompson, *Time crunch has census-takers in Arkansas racing the clock*, (Aug. 9, 2020), ARK. DEMOCRAT-GAZETTE, <https://www.arkansasonline.com/news/2020/aug/09/census-count-time-cut-short-advocates-say/?latest> (affecting rights because “[i]f a county in Arkansas has a lower-than-accurate census count, it loses out on representation”).
- Megan Tomasic, *Earlier census deadline could cause W.Pa. officials to accelerate counts*, TRIB TOTAL MEDIA (July 31, 2020), <https://triblive.com/local/regional/local-leaders-respond-to-date-change-for-in-person-census-count-collection/> (estimating that the decision to cut short in-person counting efforts could result in “catastrophic outcomes for cities and towns across the country who rely on federal funding and congressional apportionment”).
- Katie Rogers, Adam Liptak, Michael Crowley & Michael Wines, *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html> (reporting on President Trump’s July 11 Rose Garden announcement that the administration’s goal is to obtain data on citizenship to eliminate noncitizens from the population bases used to draw political boundaries).
- Dan Mangan & Tucker Higgins, *Trump Abandons Fight to Put Citizenship Question on Census, Says He Can Get Data From Existing Records*, CNBC (July 11, 2019), <https://www.cnn.com/2019/07/11/trump-abandons-fight-to-put-citizenship-question-on-census.html> (quoting Dale Ho, director at the ACLU, as stating President Trump “lost in the Supreme Court, which saw through his lie about needing the question for the Voting Rights Act . . . It is clear he simply wanted to sow fear in immigrant communities and turbocharge Republican gerrymandering efforts by diluting the political influence of Latino communities.”).

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- Jeff Mason & David Shepardson, *Trump Drops Census Citizenship Question, Vows to Get Data From Government*, REUTERS (July 11, 2019), <https://www.reuters.com/article/us-usa-census/trump-drops-census-citizenship-question-vows-to-get-data-from-government-idUSKCN1U61D9> (quoting Michael Waldman, president of the Brennan Center, as saying that the Brennan Center would challenge “any administration move to violate the clear and strong rules protecting the privacy of everyone’s responses, including the rules barring the use of personal census data to conduct law or immigration enforcement activities.”).

Questions and Concerns That the Census Is Being Improperly Politically Influenced

- Hansi Lo Wang, *‘Not Enough Time’: Census Workers Fear Rushing Count Could Botch Results*, (Aug. 11, 2020), <https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results> (quoting a Census field worker as saying about the administration’s plans “It does not feel like we have the same mission in mind. We’re trying to get a complete count. I’m not sure everyone on the team has the same mission.” Also quoting a Senator as saying, “I believe that this deviation in schedule is driven not by expert opinions of career Census Bureau employees but by external pressure from the White House and the Department of Commerce for perceived political gain.”).
- Hansi Lo Wang, *Census Door Knocking Cut a Month Short Amid Pressure to Finish Count*, NPR (July 30, 2020), <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> (“The director of the Census Bureau testified that he first learned about Trump’s plans to attempt to exclude unauthorized immigrants from the census numbers used to reapportion seats in Congress not from any internal discussions, but from a news report ‘late on a Friday’ that said ‘such a directive may be coming down.’”).
- Michael Wines, *New Census Worry: A Rushed Count Could Mean a Botched One*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/us/trump-census.html> (reporting that despite admitting that “meeting that deadline is impossible,” “the White House declined to address questions about its census plans. Responding to a reporter’s questions, the Census Bureau issued a statement on Monday that neither confirmed nor denied an effort to hasten the completion of the count and the delivery of reapportionment figures.”).
- Tara Bahrapour, *Lawmakers, inspector general demand answers on Census Bureau political appointees*, WASH. POST (July 16, 2020), https://www.washingtonpost.com/local/social-issues/lawmakers-inspector-general-demand-answers-on-census-bureau-political-appointees/2020/07/16/6c355046-c656-11ea-8ffe-372be8d82298_story.html (describing several concerns over the addition of two partisan appointees to the Census

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Bureau staff because the move could “politicize the decennial census, which is used to determine congressional apportionment”).

- Nikita Lalwani & Rachel Brown, *Donald Trump’s Efforts to Distort the Census Have Started Back Up*, SLATE (July 17, 2020), <https://slate.com/news-and-politics/2020/07/donald-trump-census-citizenship-question-executive-order-scotus.html> (“The American Statistical Association decried the news [of two new partisan appointees] as creating ‘the perception—if not reality—of improper political influence.’”).
- Adrian Sainz, *Commerce Department IG Seeks Info on 2 Census Hirings*, WASH. POST (July 8, 2020), https://www.washingtonpost.com/national/commerce-department-ig-seeks-info-on-2-census-hirings/2020/07/08/c5579c3a-c14f-11ea-8908-68a2b9eae9e0_story.html (citing Thomas Wolf, a counsel with the Brennan Center, that the two new Census Bureau employees appointed by the Trump administration raise concerns that the administration may try to violate longstanding protections ensuring that data is kept confidential and secure).
- Michael Wines, *Knocked Off Track by Coronavirus, Census Announces Delay in 2020 Count*, N.Y. TIMES (Apr. 13, 2020), <https://www.nytimes.com/2020/04/13/us/census-coronavirus-delay.html> (“[A] number of experts [] said that the aura of secrecy surrounding this census, in sharp contrast to previous ones, limited support for the count and raised questions about what, if anything, was being concealed.”).
- Jeffrey Mervis, *Why the U.S. Census Bureau Could Have Trouble Complying With Trump’s Order to Count Citizens*, SCIENCE (Sept. 16, 2019), <https://www.sciencemag.org/news/2019/09/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens> (reporting that researchers fear complying with President Trump’s Executive Order could “tarnish” the Census Bureau’s “stellar reputation for nonpartisanship”).
- Hansi Lo Wang, *Trump Wants Citizenship Data Released But States Haven’t Asked Census For That*, NPR (Sept. 11, 2019), <https://www.npr.org/2019/09/11/759510775/trump-wants-citizenship-data-released-but-states-havent-asked-census-for-it> (reporting that Thomas Hofeller, a GOP redistricting strategist, concluded that detailed citizenship information could allow for redrawing of voting districts that would be “advantageous to Republicans and Non-Hispanic Whites,” but that the Trump Administration argues Hofeller’s study played little role in advocating for a citizenship question).
- Hansi Lo Wang, *Do Trump Officials Plan to Break Centuries of Precedent in Divvying Up Congress?*, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress> (reporting

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that the Census Bureau failed to provide clear answers as to whether citizenship would be used in the 2020 Census and factor into apportionment).

The abundance of reporting from an array of media outlets listed above overwhelmingly establishes that the July 1 FOIA Request satisfies the exceptional media interest requirement because each article raises a possible question about government integrity that affects public confidence.

For the reasons set forth above, the Brennan Center has established, and reiterates here, that there is widespread and exceptional media interest surrounding the topics in its July 1 FOIA Request. Therefore, expedited processing must be granted.

The Brennan Center Is Primarily Engaged in Disseminating Information

The Brennan Center should be granted expedited processing as it is an organization “primarily engaged in disseminating information,” and there is “urgency to inform the public” about the issues their request identifies. 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

In *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, the court concluded that CREW⁶ was primarily engaged in disseminating information based on its assertion that its “primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials.” *CREW*, 436 F. Supp. 3d at 360–61. Similarly, the July 1 FOIA Request specifies that the Brennan Center is primarily a “cutting-edge communications hub, shaping opinion by taking our message directly to the press and public,” *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed August 13, 2020). The Brennan Center works first to inform the public of injustice in society and then uses its expertise to advance its policies. The legal and advocacy work the Brennan Center does has the purpose of creating a public record of important issues, all of which supports the notion that the Center is primarily engaged in disseminating information.

Following President Trump issuing the July 21 Memorandum, a multitude of lawsuits were filed challenging the constitutionality of the administration’s plan. As the July 1 Request specified, the Brennan Center will use the agency records received through the request to “explain to the public how citizenship data may be used to calculate the apportionment.” Exhibit

⁶ CREW’s website indicates that they “use[] aggressive legal action, in-depth research, and bold communications to reduce the influence of money in politics and help foster a government that is ethical and accountable.” *Who We Are, About Us*, CREW, <https://www.citizensforethics.org/who-we-are> (last accessed August 10, 2020).

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A, at 7. Access to the requested documents is essential for the public to assess the Administration's plans for using citizenship for the 2020 Census count.

Additionally, the Brennan Center has an online library with thousands of publications, articles, and reports that are publicly available,⁷ including 75 that are dedicated solely to the census such as the following:

- Thomas Wolf, Kelly Percival, and Brianna Cea, *Getting the Count Right: Key Context for the 2020 Census*, Brennan Ctr. (March 31, 2020), <https://www.brennancenter.org/sites/default/files/2020-03/CensusPrimer.pdf>.
- Kelly Percival, *Strong Confidentiality Laws Protect All Data the Census Bureau Collects*, Brennan Ctr. (Dec. 5, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/strong-confidentiality-laws-protect-all-data-census-bureau-collects>.
- Kelly Percival, *Trump Administration Abandons Citizenship Question*, Brennan Ctr. (July 12, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/trump-administration-abandons-citizenship-question>.
- Kelly Percival & Brianna Cea, *Annotated Guide to the Amicus Briefs in the Supreme Court's Citizenship Question Case*, Brennan Ctr. (Apr. 11, 2019), <https://www.brennancenter.org/our-work/court-cases/annotated-guide-amicus-briefs-supreme-courts-citizenship-question-case>.
- Thomas Wolf & Brianna Cea, *A Critical History of the U.S. Census & Citizenship Questions*, Brennan Ctr. (Apr. 2, 2019), <https://www.brennancenter.org/our-work/research-reports/critical-history-us-census-citizenship-questions>.
- Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.
- Brianna Cea, *Potential Shifts in Political Power After the 2020 Census*, Brennan Ctr. (March 27, 2018), <https://www.brennancenter.org/our-work/research-reports/potential-shifts-political-power-after-2020-census>.

⁷ *Library: A Fair & Accurate Census*, Brennan Ctr., <https://www.brennancenter.org/library/?issue=22&subissue=60&>.

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For the foregoing reasons, we request that you promptly grant our expedited processing request and produce agency records responsive to the July 1 FOIA Request. Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

Respectfully,

/s/ Patrick Carome

Patrick Carome
Caitlin Monahan
Mikayla C. Foster
Jared V. Grubow
Rieko H. Shepherd
Counsel for Requestors

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CERTIFICATION

I hereby certify, on behalf of the Brennan Center and pursuant to 5 U.S.C. § 552(6)(E)(vi), that the content of this letter, as well as the statements supporting the Brennan Center's request for expedition set forth in the original FOIA Request, are true and correct to the best of my and the Brennan Center's knowledge and belief.

/s/ Patrick Carome

Patrick Carome

Exhibit A

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July 1, 2020

By Electronic Mail

United States Department of Justice
Office of Legal Counsel

Melissa Golden
Lead Paralegal and FOIA Specialist
Office of Legal Counsel
Room 5511, 950 Pennsylvania Avenue, N.W.
Department of Justice
Washington, DC 20530-0001

Re: Freedom of Information Act Request

Dear Madam:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requests”), we respectfully request all records in the possession of the Department of Justice, Office of Legal Counsel, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation

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- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, [brennancenter.org](https://www.brennancenter.org), which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared W. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
120 Broadway
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome

Mikayla C. Foster

Jared V. Grubow

Christian Ronald

Rieko H. Shepherd

Counsel for Requestors

Exhibit Q

Office of Legal Policy

Department of Justice

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August 13, 2020

By Electronic Mail

United States Department of Justice
Office of Legal Policy

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
441 G Street, NW, 6th Floor
Washington, DC 20530-0001

Re: Brennan Center for Justice at NYU School of Law's Submission of Freedom of Information Act Request – FOIA-2020-01691

Dear Mr. Hibbard:

On July 2, 2020, our office delivered a Freedom of Information Act (“FOIA”) request on behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or the “Requestors”) to the U.S. Department of Justice Office of Information Policy located at 441 G Street, 6th Floor, Washington, DC 20530 (the “FOIA Request”). The FOIA Request (which is dated July 1st) is attached hereto as “Exhibit A.”

Please note that our July 1 FOIA Request seeks records dating from *June 27, 2019*. The response letter we received from this office on July 23, 2020, *see* attached Exhibit B, incorrectly noted the date from which the FOIA Request seeks records, *compare* Exhibit B at 1 ¶ 1 (“dating from July 27, 2019”), *with* Exhibit A, at 2 reqs. 1-4 (“All records created on or after June 27, 2019”). We write to ensure the accuracy of your search.

On July 23, 2020, you denied our request for expedited processing. Although we believe your denial was incorrect at that time, since then the political and media environment surrounding our request has substantially shifted and grounds for expedition have only strengthened. As such, and in lieu of an appeal, we submit this letter to renew and ask for reconsideration of our request for expedited processing. This letter underscores the urgency and time sensitivity of our July 1 FOIA Request and supplements the record with additional support

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for expedition. Please respond to this renewed request for expedition within 10 calendar days, or by the latest August 24, 2020.

Renewed Request for Expedited Processing

As we explained in the July 1 FOIA Request, the Brennan Center requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e). The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”² Exhibit A, at 5. We write to emphasize that expedited processing should be granted because there is widespread and exceptional media interest surrounding the 2020 Census, specifically as it relates to its uses for reapportionment, and the reporting by news organizations on the 2020 Census has also raised possible questions about the government’s integrity that affect public confidence. Further, as an organization primarily engaged in disseminating information, the Brennan Center urgently needs to inform the public of the information we are requesting.

Since the FOIA Request was filed, the exceptional interest surrounding the 2020 Census and the apportionment process has exploded. On July 21, 2020, President Trump issued a “Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census,” 85 Fed. Reg. 44,679 (July 23, 2020), which resulted in an outpouring of media and news reports.³ Further, at the time we submitted the FOIA Request, the Census Bureau had asked Congress for a four-month extension to report the state-population totals used for

¹ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

² 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

³ See, e.g., Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics; Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241>; Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083>; Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat>.

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reapportionment to the President, extending that deadline to April 31, 2021.⁴ But on August 3, 2020, the Census Bureau reported its plan to “accelerate the completion of data collection and apportionments counts” to meet the statutory deadline of December 31, 2020.⁵ Therefore, the Brennan Center’s need to receive the agency records responsive to its request, and to receive them as soon as possible, has only become more urgent.

Additionally, the Brennan Center is an organization that is primarily engaged in the dissemination of information, and there is an urgency to inform the public about the issues surrounding the 2020 Census. The Brennan Center’s efforts in law and policy are ancillary to its mission to inform and help shape public opinion. As the Brennan Center stated in its initial request, it plans to use the information received from the request to inform the public about the government’s plans to use citizenship data in calculating the reapportionment count, and how those plans were developed. With the Census Bureau’s deadline approaching even more quickly than when the request was initially submitted, these records are urgently needed to inform the public about how the government’s plans may affect their rights.

Widespread Media Interest Raising Questions of Government Integrity

As indicated in our initial request, how the Trump administration plans to use citizenship data to affect reapportionment, in contravention of the U.S. Constitution, raises questions about the government’s integrity and is the subject of intense media speculation. Media interest surrounding the government’s activities has persisted since the Supreme Court’s ruling in June 2019. And since we submitted the July 1 FOIA Request, news articles from a variety of media sources have reported nearly daily updates on the administration’s plan to collect citizenship data in conjunction with the 2020 Census, as well as its plan to truncate the timeline for conducting census operations in time to report the state-population totals to the President by December 31, 2020. We expect the influx of media attention to these matters only to continue and expand.

The courts have not specified exactly what threshold must be met for the subject matter of a FOIA request to qualify as a “matter of widespread and exceptional media interest,” but, under any standard, that threshold is met here. Agencies entertaining a request for expedited processing on this basis cannot “simply turn a blind eye to the flurry of media attention” surrounding a topic. *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 32 (D.D.C. 2004). Even just a “handful of articles” are sufficient to establish the “exceptional

⁴ See *Statement on 2020 Census Operational Adjustments Due to COVID-19*, Release No. CB20-RTQ.16, available at <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=10000001175162>

⁵ See *Statement from U.S. Census Bureau Director Steven Dillingham: Delivery a Completed and Accurate 2020 Census Count*, Release No. CB20-RTQ.23, available at <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>.

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media interest” prong if those articles are “published in a variety of publications, and repeatedly reference the ongoing national discussion” about the issues at hand. *Id.*

Each of the articles listed below also indicates that there are possible questions about the Government’s integrity that affect public confidence. *See Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 505 (D.D.C. 2018) (requiring “the same matter that draws widespread and exceptional media interest [to] be the matter in which there exists possible questions about the government’s integrity that affect public confidence”). A possible question about government integrity is raised where the articles indicate possible ethics issues, *id.* at 508 (“The primary way to determine whether such possible questions exist is by examining the state of public coverage of the matter at issue, and whether that coverage surfaces possible ethics issues.”), or if the reports suggest the government is acting unconstitutionally, *see Am. Civil Liberties Union*, 321 F. Supp. 2d at 32 (concluding that possible questions of government integrity were raised by articles that reported on whether the issue at bar violated the constitutional rights of the public).

The articles listed below raise issues such as: (1) whether the plans revealed by the President’s July 21st Memo are unconstitutional or otherwise violate federal law; (2) whether the citizenship data the Government plans to use will be accurate and thus legitimate; (3) whether the reapportionment counting plan affects the constitutional right to representation or affects other constitutional rights; and (4) whether the Census count is being improperly politically influenced or is otherwise lacking transparency. *See Citizens for Responsibility and Ethics in Wash. v. Dep’t of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020) (“CREW”) (instructing that “possible questions” does not require proving “wrongdoing by the government”). The public has the right to know that the Census and the government’s use of Census data is lawful, ethical, and fair; any suggestion to the contrary affects public confidence in the government.

The myriad media reports raise possible questions about government integrity, come from a variety of publications, and are all related to the agency records requested in the July 1 FOIA Request. They, at minimum, include the following:

The Government Is Acting Unconstitutionally

- *Editorial: The census counts, so Congress must make sure there’s time to make the count accurate*, HOUS. CHRONICLE (Aug. 5, 2020), <https://www.houstonchronicle.com/opinion/editorials/article/Editorial-The-census-counts-so-Congress-must-15461351.php> (“These immigrants work, pay taxes and contribute to the community. They should be counted. Everyone should. That’s not just a good idea, it’s the law.”).
- Steven Shepard, *Census Bureau will finish count earlier than expected, deliver data to Trump*, POLITICO (Aug. 3, 2020), <https://www.politico.com/news/2020/08/03/census-bureau-data-trump-391146> (reporting that “[t]his latest scheme is nothing more than a

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partisan attempt at manipulating the census to benefit the president’s allies, but it plainly violates the U.S. Constitution and federal laws, and cannot stand”).

- Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics (describing three lawsuits filed challenging the government’s arbitrary and capricious decision to exclude non-citizens from the census apportionment count).
- Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html> (noting that “[t]he action directly conflicts with the traditional consensus interpretation of the Constitution”)
- Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083> (reporting on President Trump signing a memorandum “meant to exclude unauthorized immigrants from being taken into account when the government divides up congressional seats, a move that civil-rights groups swiftly vowed to challenge in court” and suggesting that the request may cause the Census Bureau to violate federal law).
- David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002> (reporting on President Trump’s July 21, 2020 memorandum noting that the “memo does not say how the U.S. Census Bureau could distinguish citizens from non-citizens – for any reason – because counters are prohibited from a citizenship question” and noting that Trump’s demand is “blatantly unconstitutional”).
- Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat> (recognizing that the President’s memo is without constitutional authority).
- Mica Rosenberg, Nick Brown & Mimi Dwyer, *Trump Orders Voting Districts to Exclude People in U.S. Illegally*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-usa-trump-migrants-census/trump-aims-to-stop-counting-of-illegal-migrants-in-redrawing-of-us-voting-maps- idUSKCN24M26U> (reporting that “U.S. census experts and lawyers say the action is legally dubious”).
- Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump->

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undocumented-immigrants-census-376241 (reporting that “Congress has not given discretion [to the President] on what you’re supposed to be counting”).

- Kevin Liptak, Maegan Vazquez, Ariane de Vogue & Catherine E. Shoichet, *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html> (reporting that Trump’s “latest attempt to weaponize the census for an attack on immigrant communities will be found unconstitutional.”).
- Dartunorro Clark, *Trump Signs Memo to Omit Undocumented Immigrants From Census Apportionment Count*, NBC NEWS (July 21, 2020), <https://www.nbcnews.com/politics/white-house/trump-sign-executive-order-aimed-omitting-undocumented-immigrants-census-count-n1234228> (quoting advocates statements that “[t]he Constitution requires that everyone in the U.S. be counted in the census. President Trump can’t pick and choose”).
- Jordan Fabian & Greg Stohr, *Trump Bars U.S. Census From Counting Undocumented Immigrants*, BLOOMBERG (July 21, 2020), <https://www.bloomberg.com/news/articles/2020-07-21/trump-order-to-bar-census-from-counting-undocumented-immigrants> (quoting DNC President Tom Perez as saying the President’s order is “an unconstitutional order that has no purpose other than to silence and disempower Latino voices and communities of color”).
- Sam Levine, *Trump Orders Undocumented Immigrants Excluded From Key Census Count*, GUARDIAN (July 21, 2020), <https://www.theguardian.com/us-news/2020/jul/21/trump-executive-order-census-undocumented-immigrants> (“The Trump administration appears to be on shaky legal ground – the US constitution requires seats in Congress to be apportioned based on the ‘whole number of persons’ counted in each state during each decennial census.”).
- Matt Stieb, *Trump Tries Last-Ditch Order to Keep Undocumented Immigrants Off Census*, NEW YORK (July 21, 2020), <https://nymag.com/intelligencer/2020/07/trump-tries-last-ditch-order-to-keep-undocumented-off-census.html> (reporting that it is likely that President Trump’s order will be overturned because “the Constitution does not determine between citizens and noncitizens”).
- Nicole Narea, *Trump Is Using the Census to Undermine Immigrants’ Political Power*, VOX (July 21, 2020), <https://www.vox.com/policy-and-politics/2020/7/21/21328714/trump-executive-order-immigration-census-2020-redistricting> (explaining that the memorandum “could also indirectly discourage immigrants who have yet to respond to the census from doing so,” and that “legal experts say that it clearly flouts the US Constitution, which requires that every person in the US — not just every citizen — be counted in the census.”).

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- Trevor Hughes, *Trump, Census Bureau Collect Driver's License Data to Check Citizenship Status of Americans*, USA TODAY (July 16, 2020), <https://www.usatoday.com/story/news/nation/2020/07/16/trump-seeks-drivers-license-data-iowa-sc-check-citizenship/5445492002/> (quoting the ACLU that the sharing of license data pursuant to Executive Order 13880 “appears to be part of a scheme motivated by an unconstitutional discriminatory purpose to dilute the political power of communities of color.”).
- John Nichols, *Trump Wants to Use 'Citizenship Data' to Gerrymander Democracy*, THE NATION (July 13, 2019), <https://www.thenation.com/article/archive/trump-census-citizenship-data-gerrymander-democracy> (reporting that the use of citizenship data, “is a threat to the basic premises of representative democracy as they have historically been understood”).
- Tess Berenson, *President Trump Backs Down on Adding Citizenship Question to Census*, TIME (July 11, 2019), <https://time.com/5624485/trump-census-citizenship-question-pivot/> (quoting Thomas Wolf, counsel with the Brennan Center, as stating “The president doesn't have the ability to unilaterally alter the census . . . The Trump administration is in a bind that it's not going to be able to escape on the substance of the justification for a citizenship question.”).

The Census Count Is Possibly Inaccurate and Possibly Illegitimate

- *What risks does ending the census count early pose?*, PBS (Aug. 9, 2020), <https://www.pbs.org/newshour/show/what-risks-does-ending-the-census-count-early-pose> (noting that the decision to shorten the Census Bureau's operations mere weeks after the memorandum calling for unauthorized immigrants to be excluded from the census numbers used to reapportion seats in Congress is “causing a lot of confusion” and asking “are there going to be enough indicators and metrics for the Census Bureau as well as outside researchers to really make that assessment of how good is the 2020 census? *How good are these results?*”).
- *Businesses to Help Wednesday as Census ends Sept. 30*, DAILY MOUNTAIN EAGLE, (Aug. 8, 2020), <http://www.mountaineagle.com/stories/businesses-to-help-wednesday-as-census-ends-sept-30,27659> (noting that Census experts and civil rights activists worry the sped-up deadlines could affect the thoroughness of the count, which determines how many congressional districts each state gets).
- Michael Wines, *At the Census Bureau, a Technical Memo Raises Alarms Over Politics*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/us/2020-census-undocumented-immigrants.html> (reporting that an internal Census Bureau memo issued on August 3, 2020 ordered an internal task force to explore statistical methods of compiling an accurate estimate of noncitizens in an effort to carry out President Trump's July mandate to exclude undocumented residents from the apportionment count).

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- Vania Patino *Census count finishing early may cause undercount in some TX Panhandle counties*, KLTV (Aug. 6, 2020), <https://www.kltv.com/2020/08/07/census-count-finishing-early-may-cause-undercount-some-tx-panhandle-counties/> (reporting that the Census Bureau’s new deadline “seems impossible” and that it is essential for the numbers to be correct for the representation to be correct).
- Michael Wines & Richard Fausset, *With Census Count Finishing Early, Fears of a Skewed Tally Rise*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html> (quoting former Census Bureau directors warning that an earlier deadline would “result in seriously incomplete enumerations in many areas across our country.”).
- *Census to Finish Count Month Early*, WBUR (Aug. 4, 2020), <https://www.wbur.org/hereandnow/2020/08/04/census-count-cut-short> (noting that many people fear that the Census’s Bureau’s shortened operations period will reduce the accuracy of the population count).
- Hansi Lo Wang, *Census Cuts All Counting Efforts Short by a Month*, NPR (Aug. 3, 2020), <https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30> (“These last-minute changes to the constitutionally mandated count of every person living in the U.S. threaten the accuracy of population numbers used to determine the distribution of political representation and federal funding for the next decade.”).
- Dudley L. Poston, Jr. and Teresa A. Sullivan, *Excluding Undocumented Immigrants from the 2020 U.S. House Apportionment*, UVA CTR. FOR POLITICS (July 30, 2020), <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment> (“[I]t is not clear whether the Secretary of Commerce could produce acceptable numbers of undocumented residents according to the timetable the new memorandum requires.”).
- Adam Shaw & John Roberts, *Trump Signs Order to Prevent Illegal Immigrants from Being Counted in Redrawing Of Voting Districts*, FOX NEWS (July 21, 2020), <https://www.foxnews.com/politics/trump-to-sign-order-illegal-immigrants-voting-districts> (noting that it is “not clear how the administration would determine who was in the country illegally” for purposes of determining reapportionment).
- Brett Samuels & Rafael Bernal, *Trump Aims To Bar Undocumented Immigrants From Counting Toward House Representation*, HILL (July 21, 2020), <https://thehill.com/latino/508314-trump-aims-to-bar-undocumented-immigrants-from-counting-toward-house-representation> (suggesting that the administration may be using “questionable social science data techniques” including sampling, which was struck down by the Supreme Court in 1999).
- Chris Sommerfeldt, *Trump Moves to Exclude Undocumented Immigrants From Census Data on Voting Districts*, N.Y. DAILY NEWS (July 21, 2020), <https://www.nydailynews.com>.

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com/news/politics/ny-trump-memo-immigrants-voting-census-20200721-5rexsyrd3vp7gqq2seu4of4-story.html (noting that “it’s unclear how the government would be able to determine whether a resident is undocumented, since the Supreme Court blocked the Trump administration last year from adding a citizenship question to the 2020 census.”).

- Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdff1af38_story.html (noting that the administration’s appointment of two “high-level political appointees to the Census Bureau ... rais[ed] concern that the new hires could attempt to influence the count”).
- Colin A. Young, *Trump Seeks to Squeeze Immigrants Out of Apportionment*, WWLP-22NEWS (July 21, 2020), <https://www.wwlp.com/news/state-politics/trump-seeks-to-squeeze-immigrants-out-of-apportionment/> (reporting that “[t]he Census, throughout our history, has always been an accurate, even count. That’s what it’s been irrespective of which party controlled Congress, controlled the presidency, and [President Trump] clearly has no such qualms about accuracy or honesty.”).
- Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html> (reporting that veteran Census Bureau officials are “worried that the new appointees will seek to skew the 2020 census totals in a similarly inaccurate way, accomplishing what the battle over the citizenship question failed to achieve.”).
- Hansi Lo Wang, *Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen> (“Many voting rights advocates, however, are skeptical about the accuracy of data that would be generated from historical records that often contain out-of-date information, especially about whether a person is currently a U.S. citizen.”).
- Aaron Boyd, *How Census is Building a Citizenship Database Covering Everyone Living in the U.S.*, NEXTGOV (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275/> (quoting a statement from the Census Bureau’s website about citizenship data stating “[w]e are still receiving and analyzing data from external sources, including federal and state administrative records, and require additional time for evaluation”).
- Tara Bahrapour, *Census Bureau’s Request for Citizenship Data From DMVs Raises Privacy, Accuracy Concerns*, WASH. POST (Oct. 17, 2019), <https://www.washingtonpost.com/local/social-issues/census-bureaus-request-for-citizenship-data-from-dmvs-raises->

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privacy-accuracy-concerns/2019/10/17/aa8771f2-f114-11e9-89eb-ec56cd414732_story.html (reporting that “DMV records [requested by the Executive Order] are not necessarily updated when a person naturalizes, and said relying on such data would result in undercounts of people who became citizens after getting driver’s licenses or state IDs — a group that includes a higher proportion of minorities than the general population.”).

- Nicole Narea, *Trump is Still Trying to Collect Citizenship Data For Redistricting*, VOX (Oct. 17, 2019), <https://www.vox.com/policy-and-politics/2019/10/17/20918989/trump-2020-census-citizenship-data-redistricting-drivers-license> (quoting Dale Ho, director of the ACLU’s Voting Rights Project, as saying that state’s Department of Motor Vehicles data is concerning because it is “highly unreliable due to poor database protocols and stale citizenship data”).
- Chris Dunn, *The Long Fight to Protect the 2020 Census from Trump*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/opinion/long-fight-protect-2020-census-trump> (“A worrisome threat to the legitimacy of this process lies with the step where the President is to certify census results to Congress.”).

An Inaccurate Reapportionment Affects Persons’ Rights

- Doug Thompson, *Time crunch has census-takers in Arkansas racing the clock*, (Aug. 9, 2020), ARK. DEMOCRAT-GAZETTE, <https://www.arkansasonline.com/news/2020/aug/09/census-count-time-cut-short-advocates-say/?latest> (affecting rights because “[i]f a county in Arkansas has a lower-than-accurate census count, it loses out on representation”).
- Megan Tomasic, *Earlier census deadline could cause W.Pa. officials to accelerate counts*, TRIB TOTAL MEDIA (July 31, 2020), <https://triblive.com/local/regional/local-leaders-respond-to-date-change-for-in-person-census-count-collection/> (estimating that the decision to cut short in-person counting efforts could result in “catastrophic outcomes for cities and towns across the country who rely on federal funding and congressional apportionment”).
- Katie Rogers, Adam Liptak, Michael Crowley & Michael Wines, *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html> (reporting on President Trump’s July 11 Rose Garden announcement that the administration’s goal is to obtain data on citizenship to eliminate noncitizens from the population bases used to draw political boundaries).
- Dan Mangan & Tucker Higgins, *Trump Abandons Fight to Put Citizenship Question on Census, Says He Can Get Data From Existing Records*, CNBC (July 11, 2019), <https://www.cnn.com/2019/07/11/trump-abandons-fight-to-put-citizenship-question-on-census.html> (quoting Dale Ho, director at the ACLU, as stating President Trump “lost in

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the Supreme Court, which saw through his lie about needing the question for the Voting Rights Act . . . It is clear he simply wanted to sow fear in immigrant communities and turbocharge Republican gerrymandering efforts by diluting the political influence of Latino communities.”).

- Jeff Mason & David Shepardson, *Trump Drops Census Citizenship Question, Vows to Get Data From Government*, REUTERS (July 11, 2019), <https://www.reuters.com/article/us-usa-census/trump-drops-census-citizenship-question-vows-to-get-data-from-government-idUSKCN1U61D9> (quoting Michael Waldman, president of the Brennan Center, as saying that the Brennan Center would challenge “any administration move to violate the clear and strong rules protecting the privacy of everyone’s responses, including the rules barring the use of personal census data to conduct law or immigration enforcement activities.”).

Questions and Concerns That the Census Is Being Improperly Politically Influenced

- Hansi Lo Wang, *‘Not Enough Time’: Census Workers Fear Rushing Count Could Botch Results*, (Aug. 11, 2020), <https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results> (quoting a Census field worker as saying about the administration’s plans “It does not feel like we have the same mission in mind. We’re trying to get a complete count. I’m not sure everyone on the team has the same mission.” Also quoting a Senator as saying, “I believe that this deviation in schedule is driven not by expert opinions of career Census Bureau employees but by external pressure from the White House and the Department of Commerce for perceived political gain.”).
- Hansi Lo Wang, *Census Door Knocking Cut a Month Short Amid Pressure to Finish Count*, NPR (July 30, 2020), <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> (“The director of the Census Bureau testified that he first learned about Trump’s plans to attempt to exclude unauthorized immigrants from the census numbers used to reapportion seats in Congress not from any internal discussions, but from a news report ‘late on a Friday’ that said ‘such a directive may be coming down.’”).
- Michael Wines, *New Census Worry: A Rushed Count Could Mean a Botched One*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/us/trump-census.html> (reporting that despite admitting that “meeting that deadline is impossible,” “the White House declined to address questions about its census plans. Responding to a reporter’s questions, the Census Bureau issued a statement on Monday that neither confirmed nor denied an effort to hasten the completion of the count and the delivery of reapportionment figures.”).
- Tara Bahrapour, *Lawmakers, inspector general demand answers on Census Bureau political appointees*, WASH. POST (July 16, 2020), <https://www.washingtonpost.com/>

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local/social-issues/lawmakers-inspector-general-demand-answers-on-census-bureau-political-appointees/2020/07/16/6c355046-c656-11ea-8ffe-372be8d82298_story.html (describing several concerns over the addition of two partisan appointees to the Census Bureau staff because the move could “politicize the decennial census, which is used to determine congressional apportionment”).

- Nikita Lalwani & Rachel Brown, *Donald Trump’s Efforts to Distort the Census Have Started Back Up*, SLATE (July 17, 2020), <https://slate.com/news-and-politics/2020/07/donald-trump-census-citizenship-question-executive-order-scotus.html> (“The American Statistical Association decried the news [of two new partisan appointees] as creating ‘the perception—if not reality—of improper political influence.’”).
- Adrian Sainz, *Commerce Department IG Seeks Info on 2 Census Hirings*, WASH. POST (July 8, 2020), https://www.washingtonpost.com/national/commerce-department-ig-seeks-info-on-2-census-hirings/2020/07/08/c5579c3a-c14f-11ea-8908-68a2b9eae9e0_story.html (citing Thomas Wolf, a counsel with the Brennan Center, that the two new Census Bureau employees appointed by the Trump administration raise concerns that the administration may try to violate longstanding protections ensuring that data is kept confidential and secure).
- Michael Wines, *Knocked Off Track by Coronavirus, Census Announces Delay in 2020 Count*, N.Y. TIMES (Apr. 13, 2020), <https://www.nytimes.com/2020/04/13/us/census-coronavirus-delay.html> (“[A] number of experts [] said that the aura of secrecy surrounding this census, in sharp contrast to previous ones, limited support for the count and raised questions about what, if anything, was being concealed.”).
- Jeffrey Mervis, *Why the U.S. Census Bureau Could Have Trouble Complying With Trump’s Order to Count Citizens*, SCIENCE (Sept. 16, 2019), <https://www.sciencemag.org/news/2019/09/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens> (reporting that researchers fear complying with President Trump’s Executive Order could “tarnish” the Census Bureau’s “stellar reputation for nonpartisanship”).
- Hansi Lo Wang, *Trump Wants Citizenship Data Released But States Haven’t Asked Census For That*, NPR (Sept. 11, 2019), <https://www.npr.org/2019/09/11/759510775/trump-wants-citizenship-data-released-but-states-havent-asked-census-for-it> (reporting that Thomas Hofeller, a GOP redistricting strategist, concluded that detailed citizenship information could allow for redrawing of voting districts that would be “advantageous to Republicans and Non-Hispanic Whites,” but that the Trump Administration argues Hofeller’s study played little role in advocating for a citizenship question).

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- Hansi Lo Wang, *Do Trump Officials Plan to Break Centuries of Precedent in Divvying Up Congress?*, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress> (reporting that the Census Bureau failed to provide clear answers as to whether citizenship would be used in the 2020 Census and factor into apportionment).

The abundance of reporting from an array of media outlets listed above overwhelmingly establishes that the July 1 FOIA Request satisfies the exceptional media interest requirement because each article raises a possible question about government integrity that affects public confidence.

For the reasons set forth above, the Brennan Center has established, and reiterates here, that there is widespread and exceptional media interest surrounding the topics in its July 1 FOIA Request. Therefore, expedited processing must be granted.

The Brennan Center Is Primarily Engaged in Disseminating Information

The Brennan Center should be granted expedited processing as it is an organization “primarily engaged in disseminating information,” and there is “urgency to inform the public” about the issues their request identifies. 5 U.S.C. § 552(a)(6)(E)(II) and 15 C.F.R. § 4.6(f)(iv).

In *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, the court concluded that CREW⁶ was primarily engaged in disseminating information based on its assertion that its “primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials.” *CREW*, 436 F. Supp. 3d at 360–61. Similarly, the July 1 FOIA Request specifies that the Brennan Center is primarily a “cutting-edge communications hub, shaping opinion by taking our message directly to the press and public,” *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed August 13, 2020). The Brennan Center works first to inform the public of injustice in society and then uses its expertise to advance its policies. The legal and advocacy work the Brennan Center does has the purpose of creating a public record of important issues, all of which supports the notion that the Center is primarily engaged in disseminating information.

Following President Trump issuing the July 21 Memorandum, a multitude of lawsuits were filed challenging the constitutionality of the administration’s plan. As the July 1 Request specified, the Brennan Center will use the agency records received through the request to “explain to the public how citizenship data may be used to calculate the apportionment.” Exhibit

⁶ CREW’s website indicates that they “use[] aggressive legal action, in-depth research, and bold communications to reduce the influence of money in politics and help foster a government that is ethical and accountable.” *Who We Are, About Us*, CREW, <https://www.citizensforethics.org/who-we-are> (last accessed August 10, 2020).

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A, at 7. Access to the requested documents is essential for the public to assess the Administration's plans for using citizenship for the 2020 Census count.

Additionally, the Brennan Center has an online library with thousands of publications, articles, and reports that are publicly available,⁷ including 75 that are dedicated solely to the census such as the following:

- Thomas Wolf, Kelly Percival, and Brianna Cea, *Getting the Count Right: Key Context for the 2020 Census*, Brennan Ctr. (March 31, 2020), <https://www.brennancenter.org/sites/default/files/2020-03/CensusPrimer.pdf>.
- Kelly Percival, *Strong Confidentiality Laws Protect All Data the Census Bureau Collects*, Brennan Ctr. (Dec. 5, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/strong-confidentiality-laws-protect-all-data-census-bureau-collects>.
- Kelly Percival, *Trump Administration Abandons Citizenship Question*, Brennan Ctr. (July 12, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/trump-administration-abandons-citizenship-question>.
- Kelly Percival & Brianna Cea, *Annotated Guide to the Amicus Briefs in the Supreme Court's Citizenship Question Case*, Brennan Ctr. (Apr. 11, 2019), <https://www.brennancenter.org/our-work/court-cases/annotated-guide-amicus-briefs-supreme-courts-citizenship-question-case>.
- Thomas Wolf & Brianna Cea, *A Critical History of the U.S. Census & Citizenship Questions*, Brennan Ctr. (Apr. 2, 2019), <https://www.brennancenter.org/our-work/research-reports/critical-history-us-census-citizenship-questions>.
- Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.
- Brianna Cea, *Potential Shifts in Political Power After the 2020 Census*, Brennan Ctr. (March 27, 2018), <https://www.brennancenter.org/our-work/research-reports/potential-shifts-political-power-after-2020-census>.

⁷ *Library: A Fair & Accurate Census*, Brennan Ctr., <https://www.brennancenter.org/library/?issue=22&subissue=60&>.

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For the foregoing reasons, we request that you promptly grant our expedited processing request and produce agency records responsive to the July 1 FOIA Request. Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

Respectfully,

/s/ Patrick Carome

Patrick Carome

Caitlin Monahan

Mikayla C. Foster

Jared V. Grubow

Rieko H. Shepherd

Counsel for Requestors

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CERTIFICATION

I hereby certify, on behalf of the Brennan Center and pursuant to 5 U.S.C. § 552(6)(E)(vi), that the content of this letter, as well as the statements supporting the Brennan Center's request for expedition set forth in the original FOIA Request, are true and correct to the best of my and the Brennan Center's knowledge and belief.

/s/ Patrick Carome

Patrick Carome

Exhibit A

WILMERHALE

July 1, 2020

By Mail

United States Department of Justice
Office of Legal Policy

Douglas Hibbard
Chief, Initial Request Staff
Office of Information Policy
Department of Justice
6th Floor
441 G. Street, N.W.
Washington, D.C. 20530-0001

Re: Freedom of Information Act Request

Dear Sir:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Department of Justice, Office of Legal Policy, including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

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be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation

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- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e) and rely on two justifications for the request.

The Department of Justice must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily engaged in disseminating information.”¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional media interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises “questions about the Government’s integrity which affect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 28 C.F.R. § 16.5(e)(iv). Further, the Department of Justice’s standard of interpretation is satisfied here as the citations above show that the “matter that draws widespread and exceptional media interest” is the same “matter in which there exists possible questions about the Government’s integrity that affect public confidence.” See *Am. Oversight v. Dep’t of Justice*, 292 F. Supp. 3d 501, 506 (D.D.C. 2018).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 28 C.F.R. § 16.5(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

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The federal government's actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in the dissemination of information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii).

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 28 C.F.R. § 16.5(e)(ii). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 28 C.F.R. § 16.5(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 28 C.F.R. § 16.5(e)(4).

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Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the Department of Justice when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,” namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”²⁹ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³⁰ about the 2020 Census

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 28 C.F.R. § 16.10(k).

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. 16.10(c)(1)(i), (c)(3), (d)(1).

²⁸ 28 C.F.R. § 16.10(k)(2)(i)–(iii).

²⁹ *Id.* § 16.10(k)(2)(ii), (ii)(A)–(B).

³⁰ *Id.* § 16.10(k)(2)(ii)(B).

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through its reports and frequently visited website.³¹ All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

Third, the records requested are “not primarily in the commercial interest of” the Brennan Center.³² The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³³ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the Department of Justice “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) and (ii) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁴ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁵ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁶ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁷ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to

³¹ See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

³² 28 C.F.R. § 16.10(k)(2)(iii).

³³ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁴ 28 C.F.R. § 16.10(k)(2)(iii)(B).

³⁵ *Id.* § 16.10(b)(6).

³⁶ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

³⁷ 28 C.F.R. § 16.10(b)(5).

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identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁸

C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.³⁹ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the Department of Justice’s definition of an “[e]ducational institution.”⁴⁰

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴¹ Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴² Rather, a representative of the news media is defined as “any person or entity that [] gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴³ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁴

The Brennan Center regularly publishes news articles and research reports on its website, brennancenter.org, which was visited by 1.9 million people in 2019.⁴⁵ The Center gathers information about the American political system, synthesizes that research, and reports that

³⁸ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

³⁹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴⁰ 28 C.F.R. § 16.10(b)(4).

⁴¹ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 28 C.F.R. § 16.10(c)(1)–(3).

⁴² See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴³ 5 U.S.C. § 552(a)(4)(A)(ii) and 28 C.F.R. § 16.10(b)(6).

⁴⁴ See *Cause of Action*, 799 F.3d at 1123.

⁴⁵ See *2019 Annual Report* 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$500.00.

* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared W. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
120 Broadway
jared.grubow@wilmerhale.com

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As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome

Patrick Carome

Mikayla C. Foster

Jared V. Grubow

Christian Ronald

Rieko H. Shepherd

Counsel for Requestors

Exhibit B



U.S. Department of Justice
 Office of Information Policy
 Sixth Floor
 441 G Street, NW
 Washington, DC 20530-0001

Telephone: (202) 514-3642

July 23, 2020

Patrick Carome
 c/o Jared Grubow
 WilmerHale
 1875 Pennsylvania Avenue NW
 Washington, DC 20006
jared.grubow@wilmerhale.com

Re: FOIA-2020-01688
 FOIA-2020-01689
 FOIA-2020-01690
 FOIA-2020-01691
 DRH:VAV:GMG

Dear Patrick Carome:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) requests dated July 1, 2020 and received in this Office on July 13, 2020, in which you requested records from the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, and Legal Policy pertaining to the 2020 Census and use of citizenship status data collected pursuant to Executive Order 13880, dating from July 27, 2019. Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some delay in the processing of your requests.

Below are the tracking numbers associated with the requests you submitted:

FOIA-2020-01688	Office of the Attorney General
FOIA-2020-01689	Office of the Deputy Attorney General
FOIA-2020-01690	Office of the Associate Attorney General
FOIA-2020-01691	Office of Legal Policy

You have requested expedited processing of your requests pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(e)(1)(ii) (2018). Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. This Office cannot identify a particular urgency to inform the public about an actual or alleged federal government activity beyond the public's right to know about government activities generally.

You have also requested expedited processing of your requests pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See *id.* § 16.5(e)(2). The Director has determined

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that your request for expedited processing should be denied. Please be advised that, although your requests for expedited processing has been denied, it has been assigned to an analyst in this Office and our processing of it has been initiated.

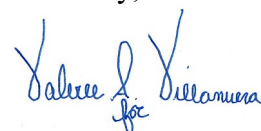
To the extent that your requests require a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of material, your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your requests. At this time we have assigned your requests to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your requests to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for your requests.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your requests, you may contact the analyst handing your request, Georgianna Gilbeaux, by telephone at the above number or you may write to them at the above address. You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your requests at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, 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, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to your requests for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your requests. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,



Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit R

Office of Management and Budget

WILMERHALE

August 13, 2020

By Electronic Mail

Dionne Hardy
FOIA Officer
Office of Management and Budget
725 17th Street NW, Suite 9204
Washington, DC 20503

Re: July 10 Brennan Center for Justice at NYU School of Law’s Submission of Freedom of Information Act Request – OMB FOIA No. 2020-442

Dear Ms. Hardy:

On July 10, 2020, our office delivered a Freedom of Information Act (“FOIA”) request on behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or the “Requestors”) to the United States Office of Management and Budget via electronic mail to MBX.OMB.FOIA@omb.eop.gov (the “FOIA Request”). The FOIA Request is attached hereto as “Exhibit A.”

We have not received a decision regarding our expedited processing request within 10 calendar days as required by 5 U.S.C. § 552(a)(6)(E)(ii)(I) or a response to the FOIA Request itself within 20 working days as required by 5 U.S.C. § 552(a)(6)(A)(i).

We submit this letter to follow up on the FOIA Request, to underscore its urgency and time sensitivity, and to supplement the record with respect to the Brennan Center’s entitlement to expedited processing. *See* 5 C.F.R. § 1303.40(e)(2) (“A request for expedited processing may be made at the time of the initial request for records or at any later time”). The need for you to respond promptly to our request for expedited processing, as elaborated herein, is especially critical.

Renewed Request for Expedited Processing

As we explained in the July 10 FOIA Request, the Brennan Center requested expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.40(e). The Office of Management and Budget must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional media interest involving questions about the Government’s integrity which affect public confidence”¹ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made by an organization “primarily

¹ 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.40(e)(1)(iv).

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engaged in disseminating information.”² Exhibit A, at 5. As we have not received a response, we write to emphasize that expedited processing should be granted because there is widespread and exceptional media interest surrounding the 2020 Census, specifically as it relates to its uses for reapportionment, and the reporting by news organizations on the 2020 Census has also raised possible questions about the government’s integrity that affect public confidence. Further, as an organization primarily engaged in disseminating information, the Brennan Center urgently needs to inform the public of the information we are requesting.

Since the FOIA Request was filed, the exceptional interest surrounding the 2020 Census and the apportionment process has exploded. On July 21, 2020, President Trump issued a “Memorandum on Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census,” 85 Fed. Reg. 44,679 (July 23, 2020), which resulted in an outpouring of media and news reports.³ Further, at the time we submitted the FOIA Request, the Census Bureau had asked Congress for a four-month extension to report the state-population totals used for reapportionment to the President, extending that deadline to April 31, 2021.⁴ But on August 3, 2020, the Census Bureau reported its plan to “accelerate the completion of data collection and apportionments counts” to meet the statutory deadline of December 31, 2020.⁵ Therefore, the Brennan Center’s need to receive the agency records responsive to its request, and to receive them as soon as possible, has only become more urgent.

Additionally, the Brennan Center is an organization that is primarily engaged in the dissemination of information, and there is an urgency to inform the public about the issues

² 5 U.S.C. § 552(a)(6)(E)(II) and 5 C.F.R. § 1303.40(e)(1)(ii).

³ See, e.g., Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics; Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241>; Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally-from-being-counted-in-congressional-apportionment-11595352083>; Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html>; Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat>.

⁴ See *Statement on 2020 Census Operational Adjustments Due to COVID-19*, Release No. CB20-RTQ.16, available at <https://2020census.gov/en/news-events/press-releases/statement-covid-19-2020.html?linkId=10000001175162>

⁵ See *Statement from U.S. Census Bureau Director Steven Dillingham: Delivery a Completed and Accurate 2020 Census Count*, Release No. CB20-RTQ.23, available at <https://www.census.gov/newsroom/press-releases/2020/delivering-complete-accurate-count.html>.

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surrounding the 2020 Census. The Brennan Center's efforts in law and policy are ancillary to its mission to inform and help shape public opinion. As the Brennan Center stated in its initial request, it plans to use the information received from the request to inform the public about the government's plans to use citizenship data in calculating the reapportionment count, and how those plans were developed. With the Census Bureau's deadline approaching even more quickly than when the request was initially submitted, these records are urgently needed to inform the public about how the government's plans may affect their rights.

Widespread Media Interest Raising Questions of Government Integrity

As indicated in our initial request, how the Trump administration plans to use citizenship data to affect reapportionment, in contravention of the U.S. Constitution, raises questions about the government's integrity and is the subject of intense media speculation. Media interest surrounding the government's activities has persisted since the Supreme Court's ruling in June 2019. And since we submitted the July 1 FOIA Request, news articles from a variety of media sources have reported nearly daily updates on the administration's plan to collect citizenship data in conjunction with the 2020 Census, as well as its plan to truncate the timeline for conducting census operations in time to report the state-population totals to the President by December 31, 2020. We expect the influx of media attention to these matters only to continue and expand.

The courts have not specified exactly what threshold must be met for the subject matter of a FOIA request to qualify as a "matter of widespread and exceptional media interest," but, under any standard, that threshold is met here. Agencies entertaining a request for expedited processing on this basis cannot "simply turn a blind eye to the flurry of media attention" surrounding a topic. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 32 (D.D.C. 2004). Even just a "handful of articles" are sufficient to establish the "exceptional media interest" prong if those articles are "published in a variety of publications, and repeatedly reference the ongoing national discussion" about the issues at hand. *Id.*

Each of the articles listed below also indicates that there are possible questions about the Government's integrity that affect public confidence. *See Oversight v. Dep't of Justice*, 292 F. Supp. 3d 501, 505 (D.D.C. 2018) (requiring "the same matter that draws widespread and exceptional media interest [to] be the matter in which there exists possible questions about the government's integrity that affect public confidence"). A possible question about government integrity is raised where the articles indicate possible ethics issues, *id.* at 508 ("The primary way to determine whether such possible questions exist is by examining the state of public coverage of the matter at issue, and whether that coverage surfaces possible ethics issues."), or if the reports suggest the government is acting unconstitutionally, *see Am. Civil Liberties Union*, 321 F. Supp. 2d at 32 (concluding that possible questions of government integrity were raised by articles that reported on whether the issue at bar violated the constitutional rights of the public).

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The articles listed below raise issues such as: (1) whether the plans revealed by the President's July 21st Memo are unconstitutional or otherwise violate federal law; (2) whether the citizenship data the Government plans to use will be accurate and thus legitimate; (3) whether the reapportionment counting plan affects the constitutional right to representation or affects other constitutional rights; and (4) whether the Census count is being improperly politically influenced or is otherwise lacking transparency. *See Citizens for Responsibility and Ethics in Wash. v. Dep't of Justice*, 436 F. Supp. 3d 354, 361 (D.D.C. 2020) (“CREW”) (instructing that “possible questions” does not require proving “wrongdoing by the government”). The public has the right to know that the Census and the government's use of Census data is lawful, ethical, and fair; any suggestion to the contrary affects public confidence in the government.

The myriad media reports raise possible questions about government integrity, come from a variety of publications, and are all related to the agency records requested in the July 10 FOIA Request. They, at minimum, include the following:

The Government Is Acting Unconstitutionally

- *Editorial: The census counts, so Congress must make sure there's time to make the count accurate*, HOUS. CHRONICLE (Aug. 5, 2020), <https://www.houstonchronicle.com/opinion/editorials/article/Editorial-The-census-counts-so-Congress-must-15461351.php> (“These immigrants work, pay taxes and contribute to the community. They should be counted. Everyone should. That's not just a good idea, it's the law.”).
- Steven Shepard, *Census Bureau will finish count earlier than expected, deliver data to Trump*, POLITICO (Aug. 3, 2020), <https://www.politico.com/news/2020/08/03/census-bureau-data-trump-391146> (reporting that “[t]his latest scheme is nothing more than a partisan attempt at manipulating the census to benefit the president's allies, but it plainly violates the U.S. Constitution and federal laws, and cannot stand”).
- Hansi Lo Wang, *Trump Sued Over Attempt to Omit Unauthorized Immigrants from a Key Census Count*, NPR (July 24, 2020), https://www.npr.org/2020/07/24/894322040/trump-sued-for-attempt-to-omit-unauthorized-immigrants-from-a-key-census-count?utm_medium=RSS&utm_campaign=nprtopicspolitics (describing three lawsuits filed challenging the government's arbitrary and capricious decision to exclude non-citizens from the census apportionment count).
- Katie Rogers & Peter Baker, *Trump Seeks to Stop Counting Unauthorized Immigrants in Drawing House Districts*, N.Y. TIMES (July 21, 2020), <https://www.nytimes.com/2020/07/21/us/politics/trump-immigrants-census-redistricting.html> (noting that “[t]he action directly conflicts with the traditional consensus interpretation of the Constitution”).
- Andrew Restuccia and Paul Overberg, *Trump Moves to Exclude Unauthorized Immigrants From Counts for Congressional Seats*, WALL ST. J. (July 21, 2020), <https://www.wsj.com/articles/trump-moves-to-bar-who-are-people-in-u-s-illegally->

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from-being-counted-in-congressional-apportionment-11595352083 (reporting on President Trump signing a memorandum “meant to exclude unauthorized immigrants from being taken into account when the government divides up congressional seats, a move that civil-rights groups swiftly vowed to challenge in court” and suggesting that the request may cause the Census Bureau to violate federal law).

- David Jackson, *Trump Tells Census to Not Count Undocumented People for Purposes of Deciding House Apportionment*, USA TODAY (July 21, 2020), <https://www.usatoday.com/story/news/politics/2020/07/21/trump-tell-census-not-count-undocumented-immigrants/5459873002> (reporting on President Trump’s July 21, 2020 memorandum noting that the “memo does not say how the U.S. Census Bureau could distinguish citizens from non-citizens – for any reason – because counters are prohibited from a citizenship question” and noting that Trump’s demand is “blatantly unconstitutional”).
- Hansi Lo Wang, *With No Final Say, Trump Wants to Change Who Counts for Dividing Up Congress’ Seats*, NPR (July 21, 2020), <https://www.npr.org/2020/07/21/892340508/with-no-final-say-trump-wants-to-change-who-counts-for-dividing-up-congress-seat> (recognizing that the President’s memo is without constitutional authority).
- Mica Rosenberg, Nick Brown & Mimi Dwyer, *Trump Orders Voting Districts to Exclude People in U.S. Illegally*, REUTERS (July 21, 2020), <https://www.reuters.com/article/us-usa-trump-migrants-census/trump-aims-to-stop-counting-of-illegal-migrants-in-redrawing-of-us-voting-maps- idUSKCN24M26U> (reporting that “U.S. census experts and lawyers say the action is legally dubious”).
- Anita Kumar, *Trump Wants Immigration Out of the Census — and at the Center of the Election*, POLITICO (July 21, 2020), <https://www.politico.com/news/2020/07/21/trump-undocumented-immigrants-census-376241> (reporting that “Congress has not given discretion [to the President] on what you’re supposed to be counting”).
- Kevin Liptak, Maegan Vazquez, Ariane de Vogue & Catherine E. Shoichet, *Trump Signs Order Targeting Undocumented Immigrants in the US Census*, CNN (July 21, 2020), <https://www.cnn.com/2020/07/21/politics/white-house-census-undocumented-immigrants/index.html> (reporting that Trump’s “latest attempt to weaponize the census for an attack on immigrant communities will be found unconstitutional.”).
- Dartunorro Clark, *Trump Signs Memo to Omit Undocumented Immigrants From Census Apportionment Count*, NBC NEWS (July 21, 2020), <https://www.nbcnews.com/politics/white-house/trump-sign-executive-order-aimed-omitting-undocumented-immigrants-census-count-n1234228> (quoting advocates statements that “[t]he Constitution requires that everyone in the U.S. be counted in the census. President Trump can’t pick and choose”).
- Jordan Fabian & Greg Stohr, *Trump Bars U.S. Census From Counting Undocumented Immigrants*, BLOOMBERG (July 21, 2020), <https://www.bloomberg.com/news/articles/>

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2020-07-21/trump-order-to-bar-census-from-counting-undocumented-immigrants (quoting DNC President Tom Perez as saying the President’s order is “an unconstitutional order that has no purpose other than to silence and disempower Latino voices and communities of color”).

- Sam Levine, *Trump Orders Undocumented Immigrants Excluded From Key Census Count*, GUARDIAN (July 21, 2020), <https://www.theguardian.com/us-news/2020/jul/21/trump-executive-order-census-undocumented-immigrants> (“The Trump administration appears to be on shaky legal ground – the US constitution requires seats in Congress to be apportioned based on the ‘whole number of persons’ counted in each state during each decennial census.”).
- Matt Stieb, *Trump Tries Last-Ditch Order to Keep Undocumented Immigrants Off Census*, NEW YORK (July 21, 2020), <https://nymag.com/intelligencer/2020/07/trump-tries-last-ditch-order-to-keep-undocumented-off-census.html> (reporting that it is likely that President Trump’s order will be overturned because “the Constitution does not determine between citizens and noncitizens”).
- Nicole Narea, *Trump Is Using the Census to Undermine Immigrants’ Political Power*, VOX (July 21, 2020), <https://www.vox.com/policy-and-politics/2020/7/21/21328714/trump-executive-order-immigration-census-2020-redistricting> (explaining that the memorandum “could also indirectly discourage immigrants who have yet to respond to the census from doing so,” and that “legal experts say that it clearly flouts the US Constitution, which requires that every person in the US — not just every citizen — be counted in the census.”).
- Trevor Hughes, *Trump, Census Bureau Collect Driver’s License Data to Check Citizenship Status of Americans*, USA TODAY (July 16, 2020), <https://www.usatoday.com/story/news/nation/2020/07/16/trump-seeks-drivers-license-data-iowa-sc-check-citizenship/5445492002/> (quoting the ACLU that the sharing of license data pursuant to Executive Order 13880 “appears to be part of a scheme motivated by an unconstitutional discriminatory purpose to dilute the political power of communities of color.”).
- John Nichols, *Trump Wants to Use ‘Citizenship Data’ to Gerrymander Democracy*, THE NATION (July 13, 2019), <https://www.thenation.com/article/archive/trump-census-citizenship-data-gerrymander-democracy> (reporting that the use of citizenship data, “is a threat to the basic premises of representative democracy as they have historically been understood”).
- Tess Berenson, *President Trump Backs Down on Adding Citizenship Question to Census*, TIME (July 11, 2019), <https://time.com/5624485/trump-census-citizenship-question-pivot/> (quoting Thomas Wolf, counsel with the Brennan Center, as stating “The president doesn’t have the ability to unilaterally alter the census . . . The Trump administration is in

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a bind that it's not going to be able to escape on the substance of the justification for a citizenship question.”).

The Census Count Is Possibly Inaccurate and Possibly Illegitimate

- *What risks does ending the census count early pose?*, PBS (Aug. 9, 2020), <https://www.pbs.org/newshour/show/what-risks-does-ending-the-census-count-early-pose> (noting that the decision to shorten the Census Bureau's operations mere weeks after the memorandum calling for unauthorized immigrants to be excluded from the census numbers used to reapportion seats in Congress is “causing a lot of confusion” and asking “are there going to be enough indicators and metrics for the Census Bureau as well as outside researchers to really make that assessment of how good is the 2020 census? *How good are these results?*”).
- *Businesses to Help Wednesday as Census ends Sept. 30*, DAILY MOUNTAIN EAGLE, (Aug. 8, 2020), <http://www.mountaineagle.com/stories/businesses-to-help-wednesday-as-census-ends-sept-30,27659> (noting that Census experts and civil rights activists worry the sped-up deadlines could affect the thoroughness of the count, which determines how many congressional districts each state gets).
- Michael Wines, *At the Census Bureau, a Technical Memo Raises Alarms Over Politics*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/us/2020-census-undocumented-immigrants.html> (reporting that an internal Census Bureau memo issued on August 3, 2020 ordered an internal task force to explore statistical methods of compiling an accurate estimate of noncitizens in an effort to carry out President Trump's July mandate to exclude undocumented residents from the apportionment count).
- Vania Patino *Census count finishing early may cause undercount in some TX Panhandle counties*, KLTV (Aug. 6, 2020), <https://www.kltv.com/2020/08/07/census-count-finishing-early-may-cause-undercount-some-tx-panhandle-counties/> (reporting that the Census Bureau's new deadline “seems impossible” and that it is essential for the numbers to be correct for the representation to be correct).
- Michael Wines & Richard Fausset, *With Census Count Finishing Early, Fears of a Skewed Tally Rise*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/04/us/2020-census-ending-early.html> (quoting former Census Bureau directors warning that an earlier deadline would “result in seriously incomplete enumerations in many areas across our country.”).
- *Census to Finish Count Month Early*, WBUR (Aug. 4, 2020), <https://www.wbur.org/hereandnow/2020/08/04/census-count-cut-short> (noting that many people fear that the Census's Bureau's shortened operations period will reduce the accuracy of the population count).
- Hansi Lo Wang, *Census Cuts All Counting Efforts Short by a Month*, NPR (Aug. 3, 2020), <https://www.npr.org/2020/08/03/898548910/census-cut-short-a-month-rushes-to-finish-all-counting-efforts-by-sept-30> (“These last-minute changes to the constitutionally

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mandated count of every person living in the U.S. threaten the accuracy of population numbers used to determine the distribution of political representation and federal funding for the next decade.”).

- Dudley L. Poston, Jr. and Teresa A. Sullivan, *Excluding Undocumented Immigrants from the 2020 U.S. House Apportionment*, UVA CTR. FOR POLITICS (July 30, 2020), <http://centerforpolitics.org/crystalball/articles/excluding-undocumented-immigrants-from-the-2020-u-s-house-apportionment> (“[I]t is not clear whether the Secretary of Commerce could produce acceptable numbers of undocumented residents according to the timetable the new memorandum requires.”).
- Adam Shaw & John Roberts, *Trump Signs Order to Prevent Illegal Immigrants from Being Counted in Redrawing Of Voting Districts*, FOX NEWS (July 21, 2020), <https://www.foxnews.com/politics/trump-to-sign-order-illegal-immigrants-voting-districts> (noting that it is “not clear how the administration would determine who was in the country illegally” for purposes of determining reapportionment).
- Brett Samuels & Rafael Bernal, *Trump Aims To Bar Undocumented Immigrants From Counting Toward House Representation*, HILL (July 21, 2020), <https://thehill.com/latino/508314-trump-aims-to-bar-undocumented-immigrants-from-counting-toward-house-representation> (suggesting that the administration may be using “questionable social science data techniques” including sampling, which was struck down by the Supreme Court in 1999).
- Chris Sommerfeldt, *Trump Moves to Exclude Undocumented Immigrants From Census Data on Voting Districts*, N.Y. DAILY NEWS (July 21, 2020), <https://www.nydailynews.com/news/politics/ny-trump-memo-immigrants-voting-census-20200721-5rexysrdbbd3vp7gqq2seu4of4-story.html> (noting that “it’s unclear how the government would be able to determine whether a resident is undocumented, since the Supreme Court blocked the Trump administration last year from adding a citizenship question to the 2020 census.”).
- Tara Bahrapour, *Trump Administration Seeks to Bar Undocumented Immigrants from a Portion of the 2020 Census*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/local/social-issues/trump-administration-seeks-to-bar-undocumented-immigrants-from-a-portion-of-the-2020-census/2020/07/21/9af682ee-c87f-11ea-a99f-3bbdff1af38_story.html (noting that the administrations appointment of two “high-level political appointees to the Census Bureau ... rais[ed] concern that the new hires could attempt to influence the count”).
- Colin A. Young, *Trump Seeks to Squeeze Immigrants Out of Apportionment*, WWLP-22NEWS (July 21, 2020), <https://www.wwlp.com/news/state-politics/trump-seeks-to-squeeze-immigrants-out-of-apportionment/> (reporting that “[t]he Census, throughout our history, has always been an accurate, even count. That’s what it’s been irrespective of

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which party controlled Congress, controlled the presidency, and [President Trump] clearly has no such qualms about accuracy or honesty.”).

- Michael Wines, *Census Bureau Adds Top-Level Political Posts, Raising Fears for 2020 Count*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/us/census-bureau-cogley-korzeniewski.html> (reporting that veteran Census Bureau officials are “worried that the new appointees will seek to skew the 2020 census totals in a similarly inaccurate way, accomplishing what the battle over the citizenship question failed to achieve.”).
- Hansi Lo Wang, *Four States Are Sharing Driver’s License Info To Help Find Out Who’s A Citizen*, NPR (July 14, 2020), <https://www.npr.org/2020/07/14/890798378/south-dakota-is-sharing-drivers-license-info-to-help-find-out-who-s-a-citizen> (“Many voting rights advocates, however, are skeptical about the accuracy of data that would be generated from historical records that often contain out-of-date information, especially about whether a person is currently a U.S. citizen.”).
- Aaron Boyd, *How Census is Building a Citizenship Database Covering Everyone Living in the U.S.*, NEXTGOV (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275/> (quoting a statement from the Census Bureau’s website about citizenship data stating “[w]e are still receiving and analyzing data from external sources, including federal and state administrative records, and require additional time for evaluation”).
- Tara Bahrapour, *Census Bureau’s Request for Citizenship Data From DMVs Raises Privacy, Accuracy Concerns*, WASH. POST (Oct. 17, 2019), https://www.washingtonpost.com/local/social-issues/census-bureaus-request-for-citizenship-data-from-dmvs-raises-privacy-accuracy-concerns/2019/10/17/aa8771f2-f114-11e9-89eb-ec56cd414732_story.html (reporting that “DMV records [requested by the Executive Order] are not necessarily updated when a person naturalizes, and said relying on such data would result in undercounts of people who became citizens after getting driver’s licenses or state IDs — a group that includes a higher proportion of minorities than the general population.”).
- Nicole Narea, *Trump is Still Trying to Collect Citizenship Data For Redistricting*, VOX (Oct. 17, 2019), <https://www.vox.com/policy-and-politics/2019/10/17/20918989/trump-2020-census-citizenship-data-redistricting-drivers-license> (quoting Dale Ho, director of the ACLU’s Voting Rights Project, as saying that state’s Department of Motor Vehicles data is concerning because it is “highly unreliable due to poor database protocols and stale citizenship data”).
- Chris Dunn, *The Long Fight to Protect the 2020 Census from Trump*, BOSTON GLOBE (Feb. 17, 2020), <https://www.bostonglobe.com/2020/02/17/opinion/long-fight-protect->

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2020-census-trump (“A worrisome threat to the legitimacy of this process lies with the step where the President is to certify census results to Congress.”).

An Inaccurate Reapportionment Affects Persons’ Rights

- Doug Thompson, *Time crunch has census-takers in Arkansas racing the clock*, (Aug. 9, 2020), ARK. DEMOCRAT-GAZETTE, <https://www.arkansasonline.com/news/2020/aug/09/census-count-time-cut-short-advocates-say/?latest> (affecting rights because “[i]f a county in Arkansas has a lower-than-accurate census count, it loses out on representation”).
- Megan Tomasic, *Earlier census deadline could cause W.Pa. officials to accelerate counts*, TRIB TOTAL MEDIA (July 31, 2020), <https://triblive.com/local/regional/local-leaders-respond-to-date-change-for-in-person-census-count-collection/> (estimating that the decision to cut short in-person counting efforts could result in “catastrophic outcomes for cities and towns across the country who rely on federal funding and congressional apportionment”).
- Katie Rogers, Adam Liptak, Michael Crowley & Michael Wines, *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. TIMES (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html> (reporting on President Trump’s July 11 Rose Garden announcement that the administration’s goal is to obtain data on citizenship to eliminate noncitizens from the population bases used to draw political boundaries).
- Dan Mangan & Tucker Higgins, *Trump Abandons Fight to Put Citizenship Question on Census, Says He Can Get Data From Existing Records*, CNBC (July 11, 2019), <https://www.cnn.com/2019/07/11/trump-abandons-fight-to-put-citizenship-question-on-census.html> (quoting Dale Ho, director at the ACLU, as stating President Trump “lost in the Supreme Court, which saw through his lie about needing the question for the Voting Rights Act . . . It is clear he simply wanted to sow fear in immigrant communities and turbocharge Republican gerrymandering efforts by diluting the political influence of Latino communities.”).
- Jeff Mason & David Shepardson, *Trump Drops Census Citizenship Question, Vows to Get Data From Government*, REUTERS (July 11, 2019), <https://www.reuters.com/article/us-usa-census/trump-drops-census-citizenship-question-vows-to-get-data-from-government-idUSKCN1U61D9> (quoting Michael Waldman, president of the Brennan Center, as saying that the Brennan Center would challenge “any administration move to violate the clear and strong rules protecting the privacy of everyone’s responses, including the rules barring the use of personal census data to conduct law or immigration enforcement activities.”).

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Questions and Concerns That the Census Is Being Improperly Politically Influenced

- Hansi Lo Wang, *'Not Enough Time': Census Workers Fear Rushing Count Could Botch Results*, (Aug. 11, 2020), <https://www.npr.org/2020/08/11/901202892/not-enough-time-census-workers-fear-rushing-count-could-botch-results> (quoting a Census field worker as saying about the administration's plans "It does not feel like we have the same mission in mind. We're trying to get a complete count. I'm not sure everyone on the team has the same mission." Also quoting a Senator as saying, "I believe that this deviation in schedule is driven not by expert opinions of career Census Bureau employees but by external pressure from the White House and the Department of Commerce for perceived political gain.").
- Hansi Lo Wang, *Census Door Knocking Cut a Month Short Amid Pressure to Finish Count*, NPR (July 30, 2020), <https://www.npr.org/2020/07/30/896656747/when-does-census-counting-end-bureau-sends-alarming-mixed-signals> ("The director of the Census Bureau testified that he first learned about Trump's plans to attempt to exclude unauthorized immigrants from the census numbers used to reapportion seats in Congress not from any internal discussions, but from a news report 'late on a Friday' that said 'such a directive may be coming down.'").
- Michael Wines, *New Census Worry: A Rushed Count Could Mean a Botched One*, N.Y. TIMES (July 28, 2020), <https://www.nytimes.com/2020/07/28/us/trump-census.html> (reporting that despite admitting that "meeting that deadline is impossible," "the White House declined to address questions about its census plans. Responding to a reporter's questions, the Census Bureau issued a statement on Monday that neither confirmed nor denied an effort to hasten the completion of the count and the delivery of reapportionment figures.").
- Tara Bahrapour, *Lawmakers, inspector general demand answers on Census Bureau political appointees*, WASH. POST (July 16, 2020), https://www.washingtonpost.com/local/social-issues/lawmakers-inspector-general-demand-answers-on-census-bureau-political-appointees/2020/07/16/6c355046-c656-11ea-8ffe-372be8d82298_story.html (describing several concerns over the addition of two partisan appointees to the Census Bureau staff because the move could "politicize the decennial census, which is used to determine congressional apportionment").
- Nikita Lalwani & Rachel Brown, *Donald Trump's Efforts to Distort the Census Have Started Back Up*, SLATE (July 17, 2020), <https://slate.com/news-and-politics/2020/07/donald-trump-census-citizenship-question-executive-order-scotus.html> ("The American Statistical Association decried the news [of two new partisan appointees] as creating 'the perception—if not reality—of improper political influence.'").
- Adrian Sainz, *Commerce Department IG Seeks Info on 2 Census Hirings*, WASH. POST (July 8, 2020), <https://www.washingtonpost.com/national/commerce-department-ig->

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seeks-info-on-2-census-hirings/2020/07/08/c5579c3a-c14f-11ea-8908-68a2b9eae9e0_story.html (citing Thomas Wolf, a counsel with the Brennan Center, that the two new Census Bureau employees appointed by the Trump administration raise concerns that the administration may try to violate longstanding protections ensuring that data is kept confidential and secure).

- Michael Wines, *Knocked Off Track by Coronavirus, Census Announces Delay in 2020 Count*, N.Y. TIMES (Apr. 13, 2020), <https://www.nytimes.com/2020/04/13/us/census-coronavirus-delay.html> (“[A] number of experts [] said that the aura of secrecy surrounding this census, in sharp contrast to previous ones, limited support for the count and raised questions about what, if anything, was being concealed.”).
- Jeffrey Mervis, *Why the U.S. Census Bureau Could Have Trouble Complying With Trump’s Order to Count Citizens*, SCIENCE (Sept. 16, 2019), <https://www.sciencemag.org/news/2019/09/why-us-census-bureau-could-have-trouble-complying-trump-s-order-count-citizens> (reporting that researchers fear complying with President Trump’s Executive Order could “tarnish” the Census Bureau’s “stellar reputation for nonpartisanship”).
- Hansi Lo Wang, *Trump Wants Citizenship Data Released But States Haven’t Asked Census For That*, NPR (Sept. 11, 2019), <https://www.npr.org/2019/09/11/759510775/trump-wants-citizenship-data-released-but-states-havent-asked-census-for-it> (reporting that Thomas Hofeller, a GOP redistricting strategist, concluded that detailed citizenship information could allow for redrawing of voting districts that would be “advantageous to Republicans and Non-Hispanic Whites,” but that the Trump Administration argues Hofeller’s study played little role in advocating for a citizenship question).
- Hansi Lo Wang, *Do Trump Officials Plan to Break Centuries of Precedent in Divvying Up Congress?*, NPR (Aug. 14, 2019), <https://www.npr.org/2019/08/14/749930756/do-trump-officials-plan-to-break-centuries-of-precedent-in-divvying-up-congress> (reporting that the Census Bureau failed to provide clear answers as to whether citizenship would be used in the 2020 Census and factor into apportionment).

The abundance of reporting from an array of media outlets listed above overwhelmingly establishes that the July 1 FOIA Request satisfies the exceptional media interest requirement because each article raises a possible question about government integrity that affects public confidence.

For the reasons set forth above, the Brennan Center has established, and reiterates here, that there is widespread and exceptional media interest surrounding the topics in its July 10 FOIA Request. Therefore, expedited processing must be granted.

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In *Citizens for Responsibility and Ethics in Washington v. U.S. Department of Justice*, the court concluded that CREW⁶ was primarily engaged in disseminating information based on its assertion that its “primary purpose is to inform and educate the public about the activities of government officials and those who influence public officials.” *CREW*, 436 F. Supp. 3d at 360–61. Similarly, the July 10 FOIA Request specifies that the Brennan Center is primarily a “cutting-edge communications hub, shaping opinion by taking our message directly to the press and public,” *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed August 13, 2020). The Brennan Center works first to inform the public of injustice in society and then uses its expertise to advance its policies. The legal and advocacy work the Brennan Center does has the purpose of creating a public record of important issues, all of which supports the notion that the Center is primarily engaged in disseminating information.

Following President Trump issuing the July 21 Memorandum, a multitude of lawsuits were filed challenging the constitutionality of the administration’s plan. As the July 10 Request specified, the Brennan Center will use the agency records received through the request to “explain to the public how citizenship data may be used to calculate the apportionment.” Exhibit A, at 7. Access to the requested documents is essential for the public to assess the Administration’s plans for using citizenship for the 2020 Census count.

Additionally, the Brennan Center has an online library with thousands of publications, articles, and reports that are publicly available,⁷ including 75 that are dedicated solely to the census such as the following:

- Thomas Wolf, Kelly Percival, and Brianna Cea, *Getting the Count Right: Key Context for the 2020 Census*, Brennan Ctr. (March 31, 2020), <https://www.brennancenter.org/sites/default/files/2020-03/CensusPrimer.pdf>.
- Kelly Percival, *Strong Confidentiality Laws Protect All Data the Census Bureau Collects*, Brennan Ctr. (Dec. 5, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/strong-confidentiality-laws-protect-all-data-census-bureau-collects>.
- Kelly Percival, *Trump Administration Abandons Citizenship Question*, Brennan Ctr. (July 12, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/trump-administration-abandons-citizenship-question>.
- Kelly Percival & Brianna Cea, *Annotated Guide to the Amicus Briefs in the Supreme Court’s Citizenship Question Case*, Brennan Ctr. (Apr. 11, 2019),

⁶ CREW’s website indicates that they “use[] aggressive legal action, in-depth research, and bold communications to reduce the influence of money in politics and help foster a government that is ethical and accountable.” *Who We Are, About Us*, CREW, <https://www.citizensforethics.org/who-we-are> (last accessed August 10, 2020).

⁷ *Library: A Fair & Accurate Census*, Brennan Ctr., <https://www.brennancenter.org/library/?issue=22&subissue=60&>.

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<https://www.brennancenter.org/our-work/court-cases/annotated-guide-amicus-briefs-supreme-courts-citizenship-question-case>.

- Thomas Wolf & Brianna Cea, *A Critical History of the U.S. Census & Citizenship Questions*, Brennan Ctr. (Apr. 2, 2019), <https://www.brennancenter.org/our-work/research-reports/critical-history-us-census-citizenship-questions>.
- Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.
- Brianna Cea, *Potential Shifts in Political Power After the 2020 Census*, Brennan Ctr. (March 27, 2018), <https://www.brennancenter.org/our-work/research-reports/potential-shifts-political-power-after-2020-census>.

For the foregoing reasons, we request that you promptly grant our expedited processing request and produce agency records responsive to the July 10 FOIA Request. Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
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Respectfully,

/s/ Patrick Carome

Patrick Carome
Caitlin Monahan
Mikayla C. Foster
Jared V. Grubow
Rieko H. Shepherd
Counsel for Requestors

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CERTIFICATION

I hereby certify, on behalf of the Brennan Center and pursuant to 5 U.S.C. § 552(6)(E)(vi), that the content of this letter, as well as the statements supporting the Brennan Center's request for expedition set forth in the original FOIA Request, are true and correct to the best of my and the Brennan Center's knowledge and belief.

/s/ Patrick Carome

Patrick Carome

Exhibit A

WILMERHALE

July 10, 2020

By Electronic Mail

Dionne Hardy
FOIA Officer
Office of Management and Budget
725 17th Street NW, Suite 9204
Washington, DC 20503
OMBFOIA@omb.eop.gov

Re: Freedom of Information Act Request

Dear Madam:

On behalf of our client, the Brennan Center for Justice at NYU School of Law (the “Brennan Center” or “Center” or “Requestors”), we respectfully request all records in the possession of the Office of Management and Budget (“OMB”), including any officers, employees, or divisions thereof, on the topics listed below concerning the 2020 Census, pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”). By this letter we also request expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).

Background

On June 27, 2019, the U.S. Supreme Court struck down the Trump administration’s attempt to add an unprecedented citizenship question to the 2020 decennial census.¹ Soon after, on July 11, 2019, President Donald J. Trump renewed the administration’s attempt to collect citizenship data via the Census Bureau by issuing Executive Order 13880, which ordered the Bureau to collect pre-existing administrative records on citizenship from other federal agencies.² During the same press conference where President Trump announced Executive Order 13880, United States Attorney General William Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”³ Several agencies have already complied with that Executive Order.⁴

¹ *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2576 (2019).

² 84 Fed. Reg. 33821 (July 11, 2019).

³ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

⁴ See Hansi Lo Wang, *To Produce Citizenship Data, Homeland Security to Share Records With Census*, NPR (Jan. 4, 2020), <https://www.npr.org/2020/01/04/793325772/to-produce-citizenship-data-homeland-security-to-share-records-with-census.be>.

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Apportionment—the determination of how many seats each state receives in the U.S. House of Representatives—is a constitutionally required, once-a-decade calculation made using the results of the decennial census. Under the U.S. Code, the Secretary of Commerce provides the state-population totals required for congressional apportionment to the President.⁵ The President then must use those state totals to calculate the congressional apportionment using a mathematical formula specified by statute and report the results to Congress.⁶ Because the administration has indicated that it may attempt to use citizenship data in some way during the process for calculating the congressional apportionment but has not revealed any details of its plans to the public, this request seeks all records related to the administration’s plans for how it might use citizenship data collected by the Census Bureau for apportionment purposes.

Apportionment affects the representational rights of every person living in the United States. Accordingly, the public has a right to know how the administration intends to calculate the apportionment and whether and how citizenship data might be used in the calculation.

Records Requested

We request the following:

- 1) All records⁷ created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:
 - calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141(b) (hereinafter, the “2020 state-population totals”);
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);

⁵ 13 U.S.C. § 141(b).

⁶ 2 U.S.C. § 2a(a).

⁷ The term “records” includes any and all codes, correspondence (including electronic mail and instant messages), digital recordings, documents, directives, examinations, guidelines, handbooks, instructions, manuals, maps, microfilms, computer tapes or disks, memoranda, notes, photographs, regulations, reports, rules, or standards, including any drafts thereof.

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- changing the Census Bureau’s policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File⁸;
 - changing the Census Bureau’s policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.⁹
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
 - 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
 - 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute
- David Dewhirst, Formerly of Department of Commerce
- Eric Ueland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee

⁸ See John M. Abowd & Victoria Velkoff, *Update on Disclosure Avoidance and Administrative Data*, U.S. Census Bureau, at 12 (Sept. 13, 2019), <https://www2.census.gov/cac/sac/meetings/2019-09/update-disclosure-avoidance-administrative-data.pdf>.

⁹ *Id.*

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- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation
- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee

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- Restoring Liberty Action Committee
- The Senior Citizens League

In searching for records that are responsive to each of the four foregoing requests, please be sure to search the electronic records (including email and text messages) and non-electronic records of each person within your agency who might have any responsive records, and, in addition, please search, in particular, the electronic records and non-electronic records of each of the following persons:

- Russ Vought, Deputy Director of the Office of Management and Budget

Request for Expedited Processing

Requestors seek expedited processing of the above requests pursuant to 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.40(e) and rely on two justifications for the request.

The OMB must process requests on an expedited basis when either (1) “[a] matter of widespread and exceptional public interest about the government’s integrity which effect public confidence”¹⁰ exists; or (2) “[a]n urgency to inform the public about an actual or alleged Federal Government activity” is made.¹¹ Both bases are satisfied by this request.

First, the records requested concern a matter of widespread and exceptional public interest. There has been a plethora of reporting about how the Trump Administration plans to collect citizenship data¹² in conjunction with the 2020 Census reporting.¹³ Such news reporting discusses the nexus between Executive Order 13880 and the census generally, as well as focuses on how the Bureau is preparing citizenship data and how states might use that data for

¹⁰ 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.40(e)(iv).

¹¹ 5 U.S.C. § 552(a)(6)(E)(II) and 5 C.F.R. § 1303.40(e)(ii).

¹² See Abowd & Velkoff, *supra* note 8, at 12 (“[T]he President’s Executive Order 13880 commit[s] the Census Bureau to releasing Citizen Voting-Age Population (CVAP) data . . . by combining administrative data from a number of federal, and possibly state, agencies into a separate micro-data file that will contain a ‘best citizenship’ variable for every person in the 2020 census.”).

¹³ See, e.g., Katie Rogers et al., *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. Times (July 11, 2019), <https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html>; Wang, *supra* note 4.

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apportioning their legislatures and/or redrawing their electoral districts.¹⁴ Census Bureau policy instructs that the file used to calculate apportionment counts “does not contain any citizenship data.”¹⁵ Nevertheless, Attorney General Barr stated that the Administration “will be studying” whether the data collected via Executive Order 13880 is “relevant to” whether “illegal aliens can be included for apportionment purposes.”¹⁶ A challenge by the Trump Administration to the Census Bureau’s well-settled policy raises questions “about the government’s integrity which effect public confidence.”¹⁷

Second, there is an “urgency to inform the public” about any past, present, or future actions taken by the federal government with regard to using citizenship data to calculate the apportionment.¹⁸ Such urgency exists because any action taken by the government to incorporate citizenship status into the calculations for apportioning congressional seats would violate the clear command of the U.S. Constitution, mark a monumental shift in methodology for apportioning Congress, and contravene the Census Bureau’s current policy.¹⁹ Modeling shows how significantly the use of citizenship data would affect apportionment.²⁰

The federal government’s actual or alleged activity includes at least the following:²¹ First, the government is collecting citizenship data in conjunction with the 2020 Census. President Trump signed Executive Order 13880, requesting that citizenship data be sent to the Census

¹⁴ See, e.g., Brendan A. Shanahan, *Counting Everyone—Citizens and Non-Citizens—in the 2020 Census is Crucial*, Wash. Post (Mar. 12, 2020), <https://www.washingtonpost.com/outlook/2020/03/12/counting-everyone-citizens-non-citizens-2020-census-is-crucial/>; Adam Boyd, *How Census Is Building a Citizenship Database Covering Everyone Living in the U.S.*, Nextgov (Apr. 1, 2020), <https://www.nextgov.com/analytics-data/2020/04/how-census-building-citizenship-database-covering-everyone-living-us/164275>. A dispute is also currently ongoing involving whether non-citizens can be excluded from the population totals used for congressional apportionment. See *Alabama v. Dep’t of Commerce*, No. 18-CV-00772 (N.D. Ala. May 21, 2018) (Complaint).

¹⁵ See Abowd & Velkoff, *supra* note 8, at 9.

¹⁶ *Remarks by President Trump on Citizenship and the Census*, The White House (July 11, 2019, 5:37 p.m.), available at <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-citizenship-census>.

¹⁷ 5 U.S.C. § 552(a)(6)(E) and 5 C.F.R. § 1303.40(e)(iv).

¹⁸ 5 U.S.C. § 552(a)(6)(E)(II) and 5 C.F.R. § 1303.40(e)(ii).

¹⁹ See U.S. Const. amend. XIV, § 2 (mandating that “[r]epresentatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state”); Abowd & Velkoff, *supra* note 8, at 9; cf. *Wisconsin v. City of New York*, 517 U.S. 1, 11–12 (1996) (approving of the Secretary’s findings that “small changes in adjustment methodology would have a large impact upon apportionment” and that any adjustment “might open the door to political tampering in the future.”). Efforts to use citizenship data in light of the Census Bureau’s policy raises the specter of political tampering.

²⁰ See *States Gaining/Losing Seats Based Upon Citizen VAP Projected to 2020*, Polidata.org, <https://www.polidata.org/census/ST017KCA.pdf> (last accessed May 17, 2020).

²¹ 5 U.S.C. § 552(a)(6)(E)(v)(II) and 5 C.F.R. § 1303.40(e)(ii).

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Bureau. Several agencies have already complied with that Order.²² Second, Attorney General Barr has stated that the Justice Department would study how that data could be used in calculating apportionment. And yet, little else is known of the government's plans and whether other non-government entities may be influencing those plans. As the census is currently ongoing and the statutory deadline for calculating the apportionment is rapidly approaching, processing this request is urgent to inform the public about how the federal government is affecting their representational rights.

The Brennan Center is an organization "primarily engaged in disseminating information."²³ The Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects, including efforts to ensure that all people participate in the census. The opportunity to explain to the public how citizenship data may be used to calculate the apportionment is the best tool to mitigate any public fears of government abuses and thereby increase census participation. The records and communications requested are essential to that goal.

The Brennan Center certifies that the above explanation is true and correct to the best of its knowledge and belief.²⁴

Pursuant to the applicable statute and regulations, Requestors expect the determination regarding expedited processing to be made within 10 days.²⁵

Request for Fee Waiver or Limitation on Fees

Requestors seek a waiver of all document search, review, and duplication fees because disclosure "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 Brennan Center.²⁶ If the fee waiver request is not granted, the Brennan Center asks that fees be limited to reasonable standard charges for document duplication because the Center qualifies as a

²² See Wang, *supra* note 4.

²³ 5 U.S.C. § 552(a)(6)(E)(v)(II). Requestors are "a cutting-edge communications hub, shaping opinion by taking our message directly to the press and public." *Mission & Impact*, Brennan Ctr., <https://www.brennancenter.org/about/mission-impact> (last accessed May 17, 2020).

²⁴ 5 U.S.C. § 552(a)(6)(E)(vi) and 5 C.F.R. § 1303.40(e)(3).

²⁵ See 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 5 C.F.R. § 1303.40(e)(4).

²⁶ 5 U.S.C. § 552(a)(4)(A)(iii) and 5 C.F.R. § 1303.94(a).

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noncommercial scientific institution, an educational institution, and a representative of the news media.²⁷

A. *Disclosure Is in the Public Interest*

The records requested satisfy the three factors used by the OMB when determining whether to waive fees: (i) “[d]isclosure of the requested information would shed light on the operations or activities of the government”; (ii) “[d]isclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities”; and (iii) disclosure is not “primarily in the commercial interest of” the Brennan Center.²⁸

First, the records requested have a “direct and clear” connection with “identifiable operations or activities of the Federal Government,”²⁹ namely: (1) compilation of citizenship data by the Department of Commerce pursuant to Executive Order 13880; (2) reporting of the 2020 Census results by the Secretary of Commerce and the President; and (3) communications involving employees of the Department of Commerce, Department of Justice, or outside organizations concerning details about the 2020 Census.

Second, disclosure of the records requested would “contribute significantly to public understanding of those operations or activities” because detailed information about how the federal government plans to use citizenship data in apportionment is not “in the public domain,” and because disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”³⁰ Aside from Attorney General Barr’s brief remarks about using citizenship data for apportionment purposes, little is known about how the federal government plans to use data gathered under Executive Order 13880 for apportionment purposes or whether groups outside the government have been involved in discussions about how to use that data. The records requested will reveal those discussions. Moreover, the Brennan Center has both “expertise in the subject area” of the decennial census and apportionment, and the “ability and intention to effectively convey information to the public”³¹ about the 2020 Census through its reports and frequently visited website.³² All of these factors will ensure that the information requested will contribute significantly to public understanding of the operations and activities of the federal government.

²⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 C.F.R. § 1303.92(b)–(c).

²⁸ 5 C.F.R. § 1303.94(b)(1)–(3).

²⁹ *Id.* § 1303.94(b)(1).

³⁰ *Id.* § 1303.94(b)(2), (b)(2)(i)–(ii).

³¹ *Id.* § 1303.94(b)(2)(ii).

³² See, e.g., Kelly Percival, *Federal Laws that Protect Census Confidentiality*, Brennan Ctr. (Feb. 20, 2019), <https://www.brennancenter.org/our-work/research-reports/federal-laws-protect-census-confidentiality>.

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Third, the records requested are not “primarily in the commercial interest of” the Brennan Center.³³ The Brennan Center is a 501(c)(3) non-profit organization and does not seek the records requested for commercial use.³⁴ Instead, the Center plans to analyze, publish, and publicly disseminate the records requested at no cost. Moreover, the OMB “ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (b)(1) and (2) of [the fee waiver] section, the request is not primarily in the commercial interest of the requester.”³⁵ As explained in further detail below, the Brennan Center qualifies as a representative of the news media because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.”³⁶ And as explained above, the Center has met the first two fee-waiver requirements. It has therefore presumptively satisfied the third requirement.

For these reasons, the Brennan Center’s request for a fee waiver should be granted.

B. *The Brennan Center is a Noncommercial Scientific Institution*

Even if the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard charges for document duplication because the Center qualifies as a noncommercial scientific institution.³⁷ The Brennan Center is a noncommercial scientific institution because it conducts social scientific research into the American justice system and American democracy, the results of which are intended to inform the American public, not “promote any particular product or industry.”³⁸ As stated on its website, the Center is “an independent, nonpartisan law and policy organization” that conducts “rigorous research to identify problems and provide in-depth empirical findings and compelling analyses of pressing legal and policy issues.”³⁹

³³ 5 C.F.R. § 1303.94(b)(3).

³⁴ See, *Financial & Legal Information*, Brennan Ctr., <https://www.brennancenter.org/about/financial-legal-information> (last accessed May 18, 2020).

³⁵ 5 C.F.R. § 1303.94(b)(3)(ii).

³⁶ *Id.* § 1303.90(h).

³⁷ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 C.F.R. § 1303.90(g).

³⁸ 5 C.F.R. § 1303.90(g).

³⁹ *Research & Reports*, Brennan Ctr, <https://www.brennancenter.org/our-work/research-reports> (last accessed May 18, 2020). See, e.g., Laura Royden & Michael Li, *Extreme Maps*, Brennan Ctr. (May 9, 2017), <https://www.brennancenter.org/our-work/research-reports/extreme-maps>; Ames Grawert, *Crime Trends: 1990-2016*, Brennan Ctr. (Apr. 18, 2017), <https://www.brennancenter.org/our-work/research-reports/crime-trends-1990-2016> (examining crime statistics at the national and city level during the last quarter century).

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C. *The Brennan Center is an Educational Institution*

If the Brennan Center’s request for a fee waiver is not granted, fees should be limited to standard duplication fees because the Center also qualifies as an educational institution.⁴⁰ The Brennan Center qualifies as an educational institution because it is affiliated with the New York University School of Law, which is a “school that operates a program of scholarly research” falling under the OMB’s definition of an “educational institution.”⁴¹

D. *The Brennan Center is a Representative of the News Media*

Finally, if fees are not waived, they should be limited to standard duplication fees because the Brennan Center also qualifies as a representative of the news media.⁴² Representatives of the news media are not limited only to traditional media outlets like newspapers and periodicals.⁴³ Rather, a representative of the news media is defined as “any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.”⁴⁴ Moreover, posting content to a public website can qualify as a means of distributing it for the purposes of qualifying as a representative of the news media.⁴⁵

The Brennan Center regularly publishes news articles and research reports on its website, brennancenter.org, which was visited by 1.9 million people in 2019.⁴⁶ The Center gathers information about the American political system, synthesizes that research, and reports that information to the public. It therefore plainly falls within the definition of a representative of the news media and should be exempt from all fees associated with this request except for standard duplication fees.

In the event you deny our waiver request, please contact us if you expect the costs to exceed the amount of \$100.00.

⁴⁰ See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 C.F.R. § 1303.90(f).

⁴¹ 5 C.F.R. § 1303.90(f).

⁴² See 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 5 C.F.R. § 1303.90(h).

⁴³ See *Cause of Action v. FTC*, 799 F.3d 1108, 1119-1120 (D.C. Cir. 2015) (citing *Nat’l Sec. Archive v. Dep’t of Def.*, 880 F.2d 1381 (D.C. Cir. 1989)).

⁴⁴ 5 U.S.C. § 552(a)(4)(A)(ii) and 5 C.F.R. § 1303.90(h).

⁴⁵ See *Cause of Action*, 799 F.3d at 1123.

⁴⁶ See 2019 Annual Report 15, Brennan Ctr. (2019), https://www.brennancenter.org/sites/default/files/2020-04/2019__AnnualReport.pdf.

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* * *

To the extent that some of the requested records may be available before other records, please provide responsive records on a rolling basis as they become available.

If you determine that any requested record or portion of a requested record is exempt from disclosure, please identify each such record or portion of such record and the basis for the asserted exemption by reference to specific exemptions of FOIA. We expect release of all nonexempt records and segregable portions of otherwise exempt records. We reserve the right to appeal a decision to withhold any information.

Thank you for your prompt attention to this matter. Please copy all responsive records and furnish copies in electronic format by email or U.S. mail to undersigned counsel for the Requestors at:

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

As indicated above, we are applying for expedited processing of this request. Notwithstanding your determination of expedited processing, we would appreciate a response within twenty days of receipt of this request consistent with 5 U.S.C. § 552(a)(6)(A)(i).

Respectfully,

/s/ Patrick Carome
Patrick Carome
Mikayla C. Foster
Jared V. Grubow
Christian Ronald
Rieko H. Shepherd
Counsel for Requestors

Exhibit AA

Department of Commerce

From: [Microsoft Outlook](#)
To: Jared.Grubow@wilmerhale.com
Subject: Relayed: RE: FOIA Request, 5 U.S.C. § 552
Date: Tuesday, August 18, 2020 1:57:07 PM
Attachments: [details.txt](#)
[Untitled attachment 538451.txt](#)

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:
eFOIA@doc.gov (eFOIA@doc.gov) <mailto:eFOIA@doc.gov>
Subject: RE: FOIA Request, 5 U.S.C. § 552

From: Grubow, Jared V.
To: eFOIA@doc.gov
Subject: RE: FOIA Request, 5 U.S.C. § 552
Date: Tuesday, August 18, 2020 1:54:33 PM

To Whom It May Concern:

On behalf of the Brennan Center for Justice, we submitted an initial FOIA Request on July 1, 2020 and a renewed request for expedition on August 13, 2020. We have not received any response to date. We would appreciate an update on the status of our request.

Respectfully,

Jared Grubow

From: Grubow, Jared V. <Jared.Grubow@wilmerhale.com>
Sent: Thursday, August 13, 2020 05:55 PM
To: eFOIA@doc.gov
Subject: FW: FOIA Request, 5 U.S.C. § 552

Dear Sir or Madam:

We write in further reference to our client's July 1 FOIA request. Please find attached a renewed request for expedited processing. We look forward to your prompt decision.

Jared

From: Grubow, Jared V.
Sent: Wednesday, July 1, 2020 03:03 PM
To: 'eFOIA@doc.gov' <eFOIA@doc.gov>
Subject: FOIA Request, 5 U.S.C. § 552

To Whom It May Concern:

On behalf of the Brennan Center for Justice at New York University, please find attached, pursuant to 5 U.S.C. § 552, a Freedom of Information Act request for documents within your agency's possession, and requests for expedited processing and fee waiver. Any and all questions and responses may be directed back to this email (jared.grubow@wilmerhale.com). We thank you in advance for your cooperation.

Respectfully,

Jared

Jared V. Grubow | WilmerHale

7 World Trade Center
250 Greenwich Street
New York, NY 10007 USA
+1 212 230 8800 (t)
+1 212 230 8888 (f)
jared.grubow@wilmerhale.com

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For more information about WilmerHale, please visit us at <http://www.wilmerhale.com>.

Exhibit BB

Census Bureau



UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Washington, DC 20233-0001
OFFICE OF THE DIRECTOR

August 3, 2020

Mr. Jared Grubow
Wilmer Cutler, Pickering, Hale and Dorr, LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
Jared.grubow@wilmerhale.com

Dear Mr. Grubow:

This letter is in response to your Freedom of Information Act (FOIA), Title 5, United States Code, Section 552, request dated July 1, 2020, and follow-up letter dated July 21, 2020, to the U.S. Census Bureau's FOIA Office. We received your correspondence in this office on July 23, 2020. We have assigned to it tracking number DOC-CEN-001602 and are responding under the FOIA to your request for:

- 1) All records created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:
 - calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141 (b) (hereinafter, the "2020 state-population totals");
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau's policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File8;
 - changing the Census Bureau's policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).
- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).

Mr Jared Gubrow
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4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau and Former Advisor to the Department of Commerce
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute
- David Dewhirst, Formerly of Department of Commerce
- Eric Deland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch.
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau and Former Advisor to the Department of Commerce
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation
- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America

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- Family-:PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation
- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

In searching for records that are responsive to each of the four foregoing requests, please be sure to search the electronic records (including email and text messages) and non-electronic records of each person within your agency who might have any responsive records, and, in addition, please search, in particular, the electronic records and non-electronic records of each of the following persons:

- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau and
- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau

In your request correspondence, you are seeking a waiver of fees. Pursuant to procedures established in Department of Commerce's FOIA regulations, Title 15, Code of Federal Regulations, Section 4.11(l), we rely on the following factors in determining whether the statutory standard for granting a fee waiver has been met:

1. The subject of the requested records must concern identifiable operations or activities of the Federal Government.
2. The disclosable portions of the requested records must be meaningfully informative about Government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities.
3. The disclosure of the requested information must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.
4. The disclosure of the requested information is likely to contribute "significantly" to the public's understanding of Government operations or activities.
5. Whether the requester has a commercial interest that would be furthered by the requester.

Mr Jared Gubrow
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6. Whether any identified commercial interest of the requester is sufficiently great, in comparison with the public interest in disclosure, such that the disclosure is primarily in the commercial interest of the requester.

After review of your request, we have determined that your fee waiver justification was insufficient in detail for the records listed above. You did not provide us with the necessary information to make an informed decision as to whether or not we can appropriately grant you a fee waiver. Although we have denied your fee waiver request, no fee estimate is included with this correspondence; however, a fee estimate is underway and will be provided upon completion.

Additionally, you also seek expedited processing of your request. Pursuant to procedures established in Department of Commerce's FOIA regulations, Title 15, Code of Federal Regulations, Section 4.6(f)(1), we rely on the following factors in determining whether the statutory standard for granting expediting processing has been met:

1. Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;
2. the loss of substantial due process rights;
3. a matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence; or
4. an urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

After review of your request, we have determined that your expedited processing justification was insufficient in detail for the records listed above, and you did not provide us with the necessary information to make an informed decision as to whether or not we can appropriately grant your request expedited processing. In particular, you did not provide additional information addressing the factors outlined above. Moreover, in accordance with 15 CFR Section 4.6(f)(3), "a requestor who seeks expedited processing must submit [as part of their justification,] a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing."

If you would like further consideration of your fee waiver request and expedited processing request, please provide a detailed explanation of how it would satisfy the requirements for fee waiver. You may provide your justification to our office in writing at:

**FOIA Office
Room 3J424
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233**

Based on the above information, this constitutes a denial of your fee waiver request and expedited processing request. You have the right to appeal these denials. An appeal must be received within 90 calendar days of the date of this response letter. Address your appeal to the

Mr Jared Gubrow
DOC-CEN-2020-001602
August 3, 2020

Page 5

following office:

**Assistant General Counsel for Employment, Litigation, and Information
Room 5896
U.S. Department of Commerce,
14th and Constitution Avenue, N.W.
Washington, DC 20230**

An appeal may also be sent by e-mail to FOIAAppeals@doc.gov, 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**."

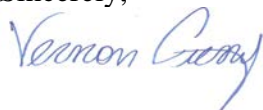
The e-mail, FOIAonline, and Office are monitored only on working days during normal business hours (8:30 a.m. to 5:00 p.m., Eastern Time, Monday through Friday). FOIA appeals posted to the e-mail box, FOIAonline, or Office after normal business hours will be deemed received on the next normal business 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 Sarabeth Rodriguez or Deloris Reed of my staff, by telephone at 301-763-2127 or by e-mail at census.foia@census.gov if you have any questions regarding your request.

Sincerely,



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

Exhibit CC

Civil Rights Division

Department of Justice

Letter 1



U.S. Department of Justice
Civil Rights Division

KK:ANF:AKL

*Freedom of Information/PA Unit -4CON
950 Pennsylvania Ave., NW
Washington, DC 20530*

Via Electronic Mail

Mr. Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
jared.grubow@wilmerhale.com

July 13, 2020

Date Received: July 1, 2020

FOI/PA No.20-00199-F

Subject of Request: Information pertaining to all records created on or after June 27, 2019 pertaining to how any citizenship-status data collected pursuant to Executive Order 13880

Dear Mr. Grubow:

This is to inform you that your request for records from the files of the Civil Rights Division was received by the Division's Freedom of Information/Privacy Acts (FOI/PA) Branch on the date indicated above. Your request has been assigned the FOI/PA number shown above. Please refer to this number in any future correspondence concerning this request. In connection with review of your FOI/PA request, the following paragraph(s) are applicable:

_____ In searching its file for records responsive to your request, _____

_____ located records that originated with the Civil Rights Division. These records were referred to the Civil Rights Division as the originating component for review and release determination. Upon completion of our review, the releasable document(s) will be sent directly to you.

XX As a result of the large number of Freedom of Information and Privacy Acts requests received by the Civil Rights Division, some delay may be encountered in processing your request. In an attempt to treat each requester fairly, we have adopted a policy of processing requests in the approximate order of receipt. Please be assured that your request is being handled as equitably as possible. We appreciate your patience and will provide you with a response at the earliest possible date. Please note that the Civil Rights Division utilizes multi-track processing in which processing ranges from faster tracks for requests (seeking access to documents already processed for prior requests) to much slower tracks for complex requests involving voluminous amounts of responsive documents or extensive consultation. At your option, you may wish to call the number below and limit the scope of your request to enable your request to be handled in the most expeditious manner available to fulfill your interests.

____ Since your letter did not include authorization or a certification of identity, we will close your file for now. We will re-open your request on receipt of the required authorization forms. The Privacy Act, and the Department of Justice Privacy Act regulation, 28 C.F.R. §16.41, require each person requesting records indexed or maintained under his or her name or another person's name, to furnish the Department with proof of identity/consent to disclosure. Please complete the enclosed form and return it directly to the Freedom of Information/Privacy Acts Branch, Civil Rights Division, US Department of Justice, Washington, D.C. 20530.

XX We have to consult with other offices in the Civil Rights Division to conduct a search and locate records which may be responsive to your request. Because of the need to examine a voluminous amount of records, we can respond only after consulting with the other offices. Thus, there may be some delay in the processing of your request as a result. Accordingly, your request falls within "unusual circumstances." See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii). Because of these unusual circumstances, we are extending the time limit to respond to your request **beyond the ten additional days provided by the statute**. The time needed to process your request will necessarily depend on the volume and complexity of the records located. For your information, this Office assigns incoming requests to one of three tracks: simple, complex, or expedited. Each request is then handled on a first-in, first-out basis in relation to other requests in the same track. Simple requests usually receive a response in approximately **one month**, whereas complex requests necessarily take longer. To allow us to respond more quickly to you, you may wish to narrow the scope of your request to limit the number of potentially responsive records or agree to an alternative time frame for processing.

XX Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some delay in the processing of your request.

If you are not satisfied with the Civil Rights Division's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account on the following website: <https://foiastar.doj.gov>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you have any further questions, contact this office by calling (202) 514-4210.

Sincerely,

April N. Freeman

for

Kilian Kagle, Chief
Freedom of Information/Privacy Acts Branch
Civil Rights Division

Exhibit DD

The following Department of Justice
components:

Office of the Attorney General,
Office of the Associate Attorney General
Office of the Deputy Attorney General
and Office of Legal Policy



U.S. Department of Justice
 Office of Information Policy
 Sixth Floor
 441 G Street, NW
 Washington, DC 20530-0001

Telephone: (202) 514-3642

July 23, 2020

Patrick Carome
 c/o Jared Grubow
 WilmerHale
 1875 Pennsylvania Avenue NW
 Washington, DC 20006
jared.grubow@wilmerhale.com

Re: FOIA-2020-01688
 FOIA-2020-01689
 FOIA-2020-01690
 FOIA-2020-01691
 DRH:VAV:GMG

Dear Patrick Carome:

This is to acknowledge receipt of your Freedom of Information Act (FOIA) requests dated July 1, 2020 and received in this Office on July 13, 2020, in which you requested records from the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, and Legal Policy pertaining to the 2020 Census and use of citizenship status data collected pursuant to Executive Order 13880, dating from July 27, 2019. Please be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some delay in the processing of your requests.

Below are the tracking numbers associated with the requests you submitted:

FOIA-2020-01688	Office of the Attorney General
FOIA-2020-01689	Office of the Deputy Attorney General
FOIA-2020-01690	Office of the Associate Attorney General
FOIA-2020-01691	Office of Legal Policy

You have requested expedited processing of your requests pursuant to the Department's standard permitting expedition for requests involving "[a]n urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information." See 28 C.F.R. § 16.5(e)(1)(ii) (2018). Based on the information you have provided, I have determined that your request for expedited processing under this standard should be denied. This Office cannot identify a particular urgency to inform the public about an actual or alleged federal government activity beyond the public's right to know about government activities generally.

You have also requested expedited processing of your requests pursuant to the Department's standard involving "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." See 28 C.F.R. § 16.5(e)(1)(iv) (2018). Pursuant to Department policy, we directed your request to the Director of Public Affairs, who makes the decision whether to grant or deny expedited processing under this standard. See *id.* § 16.5(e)(2). The Director has determined

-2-

that your request for expedited processing should be denied. Please be advised that, although your requests for expedited processing has been denied, it has been assigned to an analyst in this Office and our processing of it has been initiated.

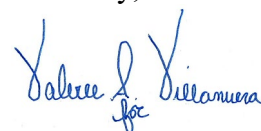
To the extent that your requests require a search in another Office, consultations with other Department components or another agency, and/or involves a voluminous amount of material, your request falls within “unusual circumstances.” See 5 U.S.C. 552 § (a)(6)(B)(i)-(iii) (2012 & Supp. V 2017). Accordingly, we will need to extend the time limit to respond to your request beyond the ten additional days provided by the statute. For your information, we use multiple tracks to process requests, but within those tracks we work in an agile manner, and the time needed to complete our work on your request will necessarily depend on a variety of factors, including the complexity of our records search, the volume and complexity of any material located, and the order of receipt of your requests. At this time we have assigned your requests to the complex track. In an effort to speed up our process, you may wish to narrow the scope of your requests to limit the number of potentially responsive records so that it can be placed in a different processing track. You can also agree to an alternative time frame for processing, should records be located, or you may wish to await the completion of our records search to discuss either of these options. Any decision with regard to the application of fees will be made only after we determine whether fees will be implicated for your requests.

If you have any questions or wish to discuss reformulation or an alternative time frame for the processing of your requests, you may contact the analyst handing your request, Georgianna Gilbeaux, by telephone at the above number or you may write to them at the above address. You may contact our FOIA Public Liaison, Valeree Villanueva, for any further assistance and to discuss any aspect of your requests at: Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001; telephone at 202-514-3642.

Additionally, 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, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to your requests for expedited processing, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Sixth Floor, 441 G Street, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically submitted within ninety days of the date of my response to your requests. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,



Douglas R. Hibbard
Chief, Initial Request Staff

Exhibit EE

Office of Legal Counsel

Department of Justice

Letter 1



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

July 10, 2020

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
O.B.O. The Brennan Center for Justice
jared.grubow@wilmerhale.com

Re: FOIA Tracking No. FY20-113

Dear Mr. Grubow:

This letter acknowledges receipt of your July 1, 2020 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC") on behalf of the Brennan Center for Justice at NYU School of Law ("Brennan Center"), in which you sought four categories of "records created on or after June 27, 2019," "concerning the 2020 Census." Your request has been assigned tracking number **FY20-113**. Based on our preliminary review of your request, and pursuant to 28 C.F.R. § 16.5(b), your request has been tentatively assigned to the "complex" processing track. If you would like to narrow your request so that it can be transferred to the "simple" track and processed more quickly, please contact Melissa Golden at the address and phone number provided below. We have not yet made a decision on your request for a fee waiver. We will do so after we determine whether fees will be assessed for this request. We note that in the event your fee waiver is denied, you have agreed to pay fees up to \$500.

You requested expedited treatment of your request on the ground that the documents sought are "urgently needed to inform the public about actual or alleged government activity." See 5 U.S.C. § 552(a)(6)(E); 28 C.F.R. § 16.5(e)(1)(ii). Department of Justice regulations set forth the basis for expedited processing, providing for expedited treatment when a request involves "[a]n urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information." 28 C.F.R. § 16.5(e)(1)(ii).

I have determined that your request for expedited processing under 28 C.F.R. § 16.5(e)(1)(ii) should be denied. While you state that "[t]he Brennan Center is a think tank and public interest law center that regularly writes and publishes reports and articles and makes appearances in various media outlets regarding census-related subjects," you have not established that the Brennan Center is "primarily engaged in disseminating information." Courts have held that to qualify under this standard, an organization must be "primarily, and not just incidentally, engaged in information dissemination." *Landmark Legal Found. v. EPA*, 910 F. Supp. 2d 270, 276 (D.D.C. 2012). Put another way, information dissemination must be "the main activity" of the requestor, and not merely "a main activity." *ACLU of N. Cal. v. DOJ*, No. 04-4447, 2005 WL 588354, at *14 (N.D. Cal. Mar. 11, 2005). Accordingly, courts have upheld the denial of requests for expedited processing from such legal policy advocacy organizations as the American Civil Liberties Union of Northern California and the Landmark Legal Foundation. See *Landmark Legal Found.*, 910 F. Supp. 2d at 275-76; *ACLU of N. Cal.*, 2005 WL 588354, at *14. A review of the Brennan Center's public statements about its mission and work indicates that, like these organizations, its primary activity is

legal policy advocacy and not information dissemination. *See, e.g., Brennan Center for Justice, About Us*, <https://www.brennancenter.org/about> (last visited July 7, 2020) (describing the Brennan Center as “a nonpartisan law and policy institute”). Therefore, because information dissemination is not the Brennan Center’s main activity, you have not satisfied this standard.

You also requested expedited treatment of your request under 28 C.F.R § 16.5(e)(1)(iv). On July 2, 2020, we referred your request to the Director of the Office of Public Affairs (“OPA”), who determines whether a request pertains to “[a] matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 28 C.F.R § 16.5(e)(1)(iv); *see id.* § 16.5(e)(2). On July 7, 2020, we were informed that OPA has denied your request for expedited processing under standard (iv) because, in the judgment of the Director of OPA, the topic of your request is neither a “matter of widespread and exceptional media interest,” nor “[a] matter . . . in which there exist possible questions about the government’s integrity that affect public confidence.” *Id.* § 16.5(e)(1)(iv). Accordingly, your request for expedited processing was denied.

Because of the considerable number of FOIA requests received by OLC prior to your request, we likely will be unable to comply with the twenty-day statutory deadline for responding to your request. Please also be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some additional delay in the processing of your request. I regret the necessity of this delay, but I assure you that your request will be processed as soon as practicable. In the meantime, if you have any questions or wish to discuss your request, you may contact Melissa Golden, OLC’s FOIA Public Liaison, at usdoj-officeoflegalcounsel@usdoj.gov, (202) 514-2053, or at Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Ave., N.W., Room 5511, Washington, DC 20530.

Additionally, 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, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

You have the right to an administrative appeal. You may administratively appeal by writing to the Director, Office of Information Policy (“OIP”), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP’s FOIA STAR portal by creating an account following the instructions on OIP’s website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

Sincerely,

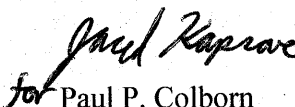
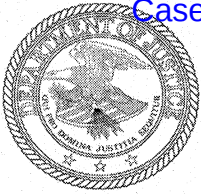

for Paul P. Colborn
Special Counsel

Exhibit FF

Office of Legal Counsel

Department of Justice

Letter 2



U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

September 4, 2020

Jared V. Grubow
Wilmer Cutler Pickering Hale and Dorr LLP
O.B.O. The Brennan Center for Justice
jared.grubow@wilmerhale.com

Re: FOIA Tracking No. FY20-113

Dear Mr. Grubow:

This letter is in response to your August 13, 2020 correspondence seeking reconsideration of the denial of expedited processing of your July 1, 2020 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC") on behalf of the Brennan Center for Justice at NYU School of Law ("Brennan Center"), in which you sought four categories of "records created on or after June 27, 2019," "concerning the 2020 Census."

We received your new request for expedited processing on August 14, 2020, and your request has been granted and assigned to the "expedited" processing track. Because of the considerable number of FOIA requests received by OLC prior to your request, including other previously expedited requests, we will be unable to comply with the twenty-day statutory deadline for responding to your request. Please also be advised that due to necessary operational changes as a result of the national emergency concerning the novel coronavirus disease (COVID-19) outbreak, there may be some additional delay in the processing of your request. I regret the necessity of this delay, but I assure you that your request will be processed as soon as practicable.

In the meantime, if you have any questions or wish to discuss your request, you may contact Melissa Golden, OLC's FOIA Public Liaison, at usdoj-officeoflegalcounsel@usdoj.gov, (202) 514-2053, or at Office of Legal Counsel, United States Department of Justice, 950 Pennsylvania Ave., N.W., Room 5511, Washington, DC 20530.

Sincerely,

A handwritten signature in black ink that reads "Jared Kaprove".

Jared Kaprove
FOIA and Records Management Attorney

Exhibit GG

Office of Management and Budget

From: [Grubow, Jared V.](#)
To: [MBX OMB FOIA](#)
Subject: RE: FOIA Request, 5 U.S.C. § 552
Date: Thursday, August 13, 2020 5:51:00 PM
Attachments: [8.13.2020 Expedited Processing OMB \(181322747\) \(1\).PDF](#)
[3bclean-control.bin](#)

Dear Ms. Hardy:

We write in further reference to our client's July 10 FOIA request. Please find attached, in lieu of an appeal, a renewed request for expedited processing. We look forward to your prompt decision.

Jared

From: MBX OMB FOIA <MBX.OMB.FOIA@OMB.eop.gov>
Sent: Friday, July 10, 2020 02:17 PM
To: Grubow, Jared V. <Jared.Grubow@wilmerhale.com>
Subject: RE: FOIA Request, 5 U.S.C. § 552

EXTERNAL SENDER

Good Afternoon: This email acknowledges receipt of your Freedom of Information Act (FOIA) request to the Office of Management and Budget (OMB) dated and received in this office on July 10, 2020. Your request has been logged in and is being processed. For your reference, the OMB FOIA number is 2020-442.

Thank you,
Dionne Hardy

From: Grubow, Jared V. <Jared.Grubow@wilmerhale.com>
Sent: Friday, July 10, 2020 12:16 PM
To: MBX OMB FOIA <MBX.OMB.FOIA@OMB.eop.gov>
Subject: [EXTERNAL] FOIA Request, 5 U.S.C. § 552

Dear Ms. Hardy:

On behalf of the Brennan Center for Justice at New York University, please find attached, pursuant to 5 U.S.C. § 552, a Freedom of Information Act request for documents within your agency's possession, and requests for expedited processing and fee waiver. Any and all questions and responses may be directed back to this email (jared.grubow@wilmerhale.com). We thank you in advance for your cooperation.

Respectfully,

Jared

Jared V. Grubow | WilmerHale

7 World Trade Center

250 Greenwich Street

New York, NY 10007 USA

+1 212 230 8800 (t)

+1 212 230 8888 (f)

jared.grubow@wilmerhale.com

Please consider the environment before printing this email.

This email message and any attachments are being sent by Wilmer Cutler Pickering Hale and Dorr LLP, are confidential, and may be privileged. If you are not the intended recipient, please notify us immediately—by replying to this message or by sending an email to postmaster@wilmerhale.com—and destroy all copies of this message and any attachments. Thank you.

For more information about WilmerHale, please visit us at <http://www.wilmerhale.com>.

Exhibit HH

Civil Rights Division

Department of Justice

Letter 2



U.S. Department of Justice
Civil Rights Division

KK
20-00199-F

Freedom of Information/PA Unit -4CON
950 Pennsylvania Ave., NW
Washington, DC 20530

Via Electronic Mail

Mr. Patrick Carome
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007

August 14, 2020

Date Received: July 1, 2020

FOI/PA No. 20-00199-F

Subject of Request: "All records created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:.."

Dear Mr. Carome:

This is to further inform you that the Civil Rights Division has granted your request for expedited processing on the basis of 28 C.F.R. § 16.5(e) (ii) for "an urgency to inform the public about an actual or alleged Federal Government activity."

Your request for records from the files of the Civil Rights Division was received by the Division's Freedom of Information/Privacy Acts (FOI/PA) Branch on the date indicated above and has been assigned the FOI/PA number shown above. Please refer to this number in any future correspondence concerning this request.

Please note that this office began processing your request on the day of receipt and commenced its search for records responsive thereto. Under 5 U.S.C. 552(a)(6)(E) (iii), an agency that grants expedited processing will process the request "as soon as practicable" which means that the Division has placed your request on a more rapid response track. That being said, your request does not supplant other similarly situated requests enjoying expedited processing themselves. Please allow me to invite your attention to previous requests by your own client populating this queue. We appreciate your patience and will provide you with a response at the earliest possible date.

If you have any further questions, contact this office by calling (202) 514-4210.

Sincerely,

Kilian Kagle

Kilian Kagle, Chief
Freedom of Information/Privacy Acts Branch
Civil Rights Division

Exhibit II

Census Bureau

Letter 2



UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Washington, DC 20233-0001
OFFICE OF THE DIRECTOR

September 11, 2020

Mr. Jared Grubow
Wilmer Cutler Pickering Hale and Dorr, LLP
7 World Trade Center
250 Greenwich Street, 42nd Floor
New York, NY 10007
Jared.Grubow@wilmerhale.com

Dear Mr. Grubow:

This letter is in response to your Freedom of Information Act (FOIA), Title 5, United States Code, Section 552, request dated July 1, 2020, and follow-up letter dated July 21, 2020, to the U.S. Census Bureau's FOIA Office. We received your correspondence in this office on July 23, 2020. We have assigned to it tracking number DOC-CEN-2020-001602 and are responding under the FOIA to your request for:

- 1) All records created on or after June 27, 2019, pertaining to how any of the citizenship-status data collected pursuant to Executive Order 13880 can, could, should, or may be used, incorporated, referenced, or considered in any of the following activities:
 - calculating or otherwise formulating the 2020 total national population;
 - calculating or otherwise formulating the 2020 state-population totals to be used to apportion the United States House of Representatives as contemplated by 13 U.S.C. § 141 (b) (hereinafter, the "2020 state-population totals");
 - reporting the 2020 state-population totals to President Trump by the Secretary of Commerce as required under 13 U.S.C. § 141(b);
 - reporting by President Trump to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled, as required under 2 U.S.C. § 2a(a);
 - changing the Census Bureau's policy for calculating the 2020 state-population totals, which currently states the 2020 state-population totals will be calculated using the Census Unedited File8;
 - changing the Census Bureau's policy for creating the Census Unedited File, which currently states the Census Unedited File will not contain any citizenship status data.
- 2) All records created on or after June 27, 2019, pertaining to the process by which the Secretary of Commerce will report the 2020 state-population totals to President Trump, as required under 13 U.S.C. § 141(b).

Mr. Jared Grubow, DOC-CEN-2020-001602
September 11, 2020

Page 2

- 3) All records created on or after June 27, 2019 pertaining to the process by which President Trump will report to Congress the 2020 state-population totals and number of congressional representatives to which each state is entitled thereunder, as required under 2 U.S.C. § 2a(a).
- 4) All records created on or after June 27, 2019 and relating to the 2020 Census in which there is any mention of, involvement in, or communication with any of the following persons or entities:

Persons

- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau and Former Advisor to the Department of Commerce
- Christopher C. Demuth, Sr., Hudson Institute
- Christopher J. Hajec, Immigration Reform Law Institute
- David Dewhirst, Formerly of Department of Commerce
- Eric Deland, White House Office of Legislative Affairs
- Eric W. Lee, Judicial Watch.
- Gail Gitcho, National Republican Redistricting Trust
- Guy Harrison, National Republic Redistricting Trust
- Hans von Spakovsky, Heritage Foundation
- J. Christian Adams, Public Interest Legal Foundation and Presidential Advisory Commission on Election Integrity
- J. Justin Reimer, Republican National Committee
- Jeff Timmer, Michigan GOP
- John Fleming, White House Chief of Staff Office
- Joseph W. Miller, Restoring Liberty
- Karen Dunn Kelley, Deputy Secretary of Commerce
- Kaylan Phillips, Public Interest Legal Foundation
- Lauren Bryan, National Republican Senatorial Committee
- Mark S. Venezia, Immigration Reform Law Institute
- Michael M. Hethmon, Immigration Reform Law Institute
- Mike Walsh, Chief of Staff to the Secretary of Commerce
- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau and Former Advisor to the Department of Commerce
- Peter B. Davidson, Department of Commerce
- Robert D. Popper, Judicial Watch
- Russ Vought, Deputy Director of Office of Management and Budget

Entities

- Allied Educational Foundation
- American Civil Rights Union
- American Legislative Exchange Council
- Citizens United
- Citizens United Foundation

Mr. Jared Grubow, DOC-CEN-2020-001602
September 11, 2020

Page 3

- Conservative Legal Defense and Education Fund
- Eagle Forum Education & Legal Defense Fund
- English First Foundation
- Fair Lines America
- Family-:PAC Federal
- Gun Owners Foundation
- Gun Owners of America, Inc.
- Heritage Foundation
- Immigration Reform Law Institute
- Judicial Watch
- National Republican Congressional Committee
- Policy Analysis Center
- Polidata
- Public Advocate of the United States
- Public Interest Legal Foundation
- Project on Fair Representation
- Republican National Committee
- Republican State Leadership Committee
- Restoring Liberty Action Committee
- The Senior Citizens League

In searching for records that are responsive to each of the four foregoing requests, please be sure to search the electronic records (including e-mail and text messages) and non-electronic records of each person within your agency who might have any responsive records, and, in addition, please search, in particular, the electronic records and non-electronic records of each of the following persons:

- Nathaniel Cogley, Deputy Director for Policy at the U.S. Census Bureau and
- Adam Korzeniewski, Senior Advisor to the Deputy Director for Policy at the U.S. Census Bureau

Pursuant to Title 15, Code of Federal Regulations, Section 4.4(c), records requested must be described in enough detail to enable Department personnel to locate them with a reasonable amount of effort. If possible, a request should include specific information about each record sought, such as date, title or name, author, recipient, and subject matter of the record. As currently stated, your request does not clearly describe the records sought, and therefore, does not constitute a proper request under FOIA. In particular, please provide clarification for the following:

1. E-mail addresses of Census employees, external persons and organizations listed. For example, please provide the exact e-mail addresses you would like searched or please provide the ending of the e-mail addresses. Such as (1) john.smith@xxx.com or (2) @xxx.com, if you do not have exact e-mail address.
2. Search terms or key word phrases.
3. Time frames.

Mr. Jared Grubow, DOC-CEN-2020-001602

September 11, 2020

Page 4

We are more than happy to assist you with your request. However, additional information is needed in order to search for responsive documents. Please clarify your request by providing additional information and describing in detail the records you seek. If necessary, for assistance, please feel free to contact Sarabeth Rodriguez or Deloris Reed of my staff by telephone at (301) 763-2127 or by e-mail at census.foia@census.gov

If a clarification of your request or other communication is not received within 30 calendar days from the date of this letter, your FOIA request will be considered "closed."

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 202741-5770; toll free at 1 877-684-6448
facsimile at 202-741-5769

Please contact Sarabeth Rodriguez or Deloris Reed by telephone at 301-763-2127 or by e-mail 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

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 5 U.S.C. § 552 et. seq. Plaintiff brings this action to compel nine federal agencies to produce records responsive to FOIA requests concerning the 2020 U.S. Census within 30 days.

VII. REQUESTED IN COMPLAINT	CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/>	DEMAND \$ _____	JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: September 21, 2020	SIGNATURE OF ATTORNEY OF RECORD: <i>Patrick Carome</i>
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI.** CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW,

Plaintiff

v.

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

Defendant

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Civil Action No. 1:20-cv-2674

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

United States Census Bureau
4600 Silver Hill Road
Washington, DC 20233

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patrick Carome
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6000
Patrick.Carome@wilmerhale.com

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW,

_____ +)
Plaintiff)
)
)

v.)

UNITED STATES DEPARTMENT
OF COMMERCE, et al.,

_____ +)
Defendant)
)

Civil Action No. 1:20-cv-2674

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Civil Rights Division,
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Office of the Assistant Attorney General, Main
Washington, DC 20530

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patrick Carome
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6000
Patrick.Carome@wilmerhale.com

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

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Printed name and title

Server's address

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Civil Action No. _____

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Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Civil Action No. _____

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Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

BRENNAN CENTER FOR JUSTICE
AT NYU SCHOOL OF LAW,

_____)
Plaintiff)

v.)

UNITED STATES DEPARTMENT OF
COMMERCE, et al.,

_____)
Defendant)

Civil Action No. 1:20-cv-2674

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patrick Carome
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6000
Patrick.Carome@wilmerhale.com

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: