

1 MANATT, PHELPS & PHILLIPS, LLP
JOHN F. LIBBY (Bar No. CA 128207)
2 E-mail: jlibby@manatt.com
JOHN W. MCGUINNESS (Bar No. CA 277322)
3 E-mail: jmcguinness@manatt.com
EMIL PETROSSIAN (Bar No. CA 264222)
4 E-mail: epetrossian@manatt.com
11355 West Olympic Boulevard
5 Los Angeles, California 90064
Telephone: (310) 312-4000
6 Facsimile: (310) 312-4224

7 LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
KRISTEN CLARKE (*Pro Hac Vice* Application Forthcoming)
8 Email: kclarke@lawyerscommittee.org
JON M. GREENBAUM (Bar No. CA 166733)
9 E-mail: jgreenbaum@lawyerscommittee.org
EZRA D. ROSENBERG (*Pro Hac Vice* Application Forthcoming)
10 E-mail: erosenberg@lawyerscommittee.org
DORIAN L. SPENCE (*Pro Hac Vice* Application Forthcoming)
11 E-mail: dspence@lawyerscommittee.org
1401 New York Avenue NW, Suite 400
12 Washington, DC 20005
Telephone: (202) 662-8600
13 Facsimile: (202) 783-0857

14 PUBLIC COUNSEL
MARK ROSENBAUM (Bar No. CA 59940)
15 E-mail: mrosenbaum@publiccounsel.org
610 South Ardmore Avenue
16 Los Angeles, California 90005
Telephone: (213) 385-2977
17 Facsimile: (213) 385-9089

18 *Attorneys for Plaintiffs*
CITY OF SAN JOSE and BLACK ALLIANCE FOR JUST
19 IMMIGRATION

20 *[Additional Counsel Listed on Signature Page]*

21 **IN THE UNITED STATES DISTRICT COURT**
22 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
23 **SAN JOSE DIVISION**

25 CITY OF SAN JOSE, a municipal
corporation; and BLACK ALLIANCE
26 FOR JUST IMMIGRATION, a
California nonprofit corporation,
27
28 Plaintiffs,

Case No. 5:18-cv-2279

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

vs.

WILBUR L. ROSS, JR., in his official capacity as Secretary of the U.S. Department of Commerce; U.S. DEPARTMENT OF COMMERCE; RON JARMIN, in his official capacity as Acting Director of the U.S. Census Bureau; U.S. CENSUS BUREAU,

Defendants.

[Administrative Procedure Act Case]

INTRODUCTION

1. The City of San Jose, a municipal corporation (“San Jose” or “the City”), and the Black Alliance for Just Immigration, a California nonprofit corporation (“BAJI”), (collectively “Plaintiffs”) seek declaratory and injunctive relief against the U.S. Department of Commerce, Wilbur L. Ross, Jr., in his official capacity as Secretary of the U.S. Department of Commerce, the U.S. Census Bureau, and Ron Jarmin in his official capacity as Acting Director of the U.S. Census Bureau (collectively, “Defendants”) for violating the United States Constitution and the Administrative Procedure Act (“APA”) by arbitrarily and capriciously adding new and untested questions to the 2020 Decennial Census that will require all United States residents to disclose whether they are citizens. If these questions are added to the Census, there will be an increase in the undercount of persons living in San Jose, and specifically an increased undercount of minority populations, leading to the unconstitutional and unlawful loss of representation in the United States House of Representatives and millions of dollars of federal funds. In addition, BAJI’s mission to advance racial, social, and economic justice for the minority and immigrant communities it serves will be frustrated by the inclusion of citizenship questions in the 2020 Census. Further, BAJI will have to divert organizational resources both to educate its constituents regarding issues posed by these questions and to counteract their harmful effect.

1 2. The Constitution provides that all persons in each state, regardless of
2 citizenship status, shall be counted every ten years. U.S. Const., art. I, § 2, cl. 3,
3 and amend. XIV, § 2. The Constitution mandates this “actual Enumeration” of the
4 population for the purpose of apportioning congressional representatives among the
5 states. U.S. Const., art. I, § 2, cl. 3. It is long-settled that all persons residing in the
6 United States—citizens and non-citizens alike—must be counted to fulfill the
7 Constitution’s “actual Enumeration” mandate. *Id.*; *Fed’n for Am. Immigration*
8 *Reform v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C. 1980); *see also Plyler v. Doe*,
9 457 U.S. 202, 210 (1982) (holding that the Equal Protection Clause applies to
10 persons who are in the country without proper authorization because “[w]hatever
11 his status under the immigration laws, an alien is surely a ‘person’ in any ordinary
12 sense of that term”).

13 3. The U.S. Census Bureau (“Bureau”), a division of the U.S. Department
14 of Commerce, will conduct the next census, also known as the “decennial census,”
15 in 2020 (“2020 Census”). The census surveys the number of persons in each
16 household and, in the process, gathers certain demographic information about those
17 persons. The Bureau’s stated goal in administering the census “is to count every
18 person living in the United States once, only once and in the right place.”

19 4. As an administrative agency of the executive branch, the Bureau is
20 subject to the APA, 5 U.S.C. §§ 551 *et seq.* Among other provisions, the APA
21 requires that agency action not be “arbitrary, capricious, an abuse of discretion, or
22 otherwise not in accordance with law,” not be “contrary to constitutional right,
23 power, privilege or immunity,” and not be “in excess of statutory jurisdiction,
24 authority, or limitations, or short of statutory right.” 5 U.S.C. § 706.

25 5. Not since 1950 has the decennial census asked whether each
26 respondent is a citizen of the United States. Consistent with modern practice, and
27 as required by statute under 13 U.S.C. § 141(f)(1), the Bureau submitted to
28

1 Congress in March 2017 a report of the proposed subjects planned for the 2020
2 Census. None of the subjects related to citizenship or immigration status.

3 6. However, in a December 12, 2017 letter, late in the census planning
4 process and months after the statutory deadline for reporting proposed subjects, the
5 General Counsel of the Justice and Management Division of the U.S. Department
6 of Justice requested that the Bureau include a citizenship question on the 2020
7 Census. While the letter suggested that adding a citizenship question would assist
8 the Department of Justice in enforcing “Section 2 of the Voting Rights Act,”
9 codified at 52 U.S.C. § 10301, the letter did not address whether or how a
10 citizenship question would facilitate the Bureau’s constitutional duty to capture the
11 “actual Enumeration” of the U.S. population. Nor did the letter consider whether
12 adding a citizenship question would serve the Voting Rights Act’s purpose of
13 ensuring fair representation for all communities, ignoring substantial evidence—
14 and the Bureau’s own past admissions—that fewer people would respond to the
15 2020 Census if it includes a citizenship question. *See* Ex. 1 (Dec. 12, 2017, Letter
16 from Arthur E. Gary to Dr. Ron Jarmin).

17 7. On March 26, 2018, the Department of Commerce, setting aside
18 decades of practice, announced that the final list of census questions that it will
19 submit to Congress will include a question asking the citizenship status of every
20 person in every household in the United States. Ignoring its own past findings, and
21 highlighting the arbitrary and capricious nature of its decision, the Department of
22 Commerce asserted that it “is not able to determine definitively how inclusion of a
23 citizenship question on the decennial census will impact responsiveness” to the
24 2020 Census. Ex. 2 at 7 (Mar. 26, 2018, Letter from Wilbur Ross to Karen Dunn
25 Kelley).

26 8. The Department’s action violated the APA’s prohibition against
27 arbitrary and capricious actions, as well as actions that violate the Constitution and
28 exceed the agency’s statutory authority. The Bureau departed from its long-

1 standing and well-established processes for revising the decennial census
 2 questionnaire as well as the schedule for reporting subjects of the census to
 3 Congress. While changes to questions on the decennial census typically take
 4 several years to test, evaluate, and implement, Defendants’ decision-making
 5 process in this instance—to the extent it even took place—was compressed into a
 6 hasty and unprecedented period of fewer than four months, and well after it had
 7 reported to Congress on the planned subjects for the 2020 Census.

8 9. The citizenship question asks, “Is this person a citizen of the United
 9 States?” and requires the respondent to select one of the following responses:

10
 11 **Is this person a citizen of the United States?**

- 12 Yes, born in the United States
- 13 Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or
 Northern Marianas
- 14 Yes, born abroad of U.S. citizen parent or parents
- 15 Yes, U.S. citizen by naturalization – *Print year of naturalization* ↗
- 16
- 17 No, not a U.S. citizen

18 (1) “Yes, born in the United States”; (2) “Yes, born in Puerto Rico, Guam, the U.S.
 19 Virgin Islands, or Northern Marianas”; (3) “Yes, born abroad of U.S. citizen parent
 20 or parents”; (4) “Yes, citizen by naturalization – Print year of naturalization”; or (5)
 21 “No, not a U.S. citizen.”

22
 23 10. Including the citizenship question on the 2020 Census will directly
 24 impede the Bureau from achieving its objective of making an “actual Enumeration”
 25 of the U.S. population. Ultimately, it will make the census data less accurate and
 26 reliable. Numerous studies—including those conducted by the Bureau itself—point
 27 to the same conclusion: Asking about citizenship will likely reduce the number of
 28 non-citizens and their citizen relatives or household members who respond to the

1 2020 Census, and result in an increased undercount of minority populations. At
2 least four former Bureau directors share the view that inquiring about citizenship
3 status on the census “would likely exacerbate privacy concerns and lead to
4 inaccurate responses from non-citizens worried about a government record of their
5 immigration status.” Brief of Former Directors of the U.S. Census Bureau as Amici
6 Curiae in Support of Appellees at 23, *Evenwel v. Abbott*, 136 S.Ct. 1120 (2016)
7 (No. 14-940), 2015 WL 5675832, at *23. “The sum effect would be bad Census
8 data.” *Id.* at 25.

9 11. San Jose and its residents will suffer harm through both lost
10 representation and foregone federal funding if the citizenship question is included
11 on the 2020 Census. The data from the 2020 Census will be used not only to
12 allocate congressional seats but also to determine funding for public health,
13 education, transportation and neighborhood improvements, all of which are to be
14 determined based on population as determined by the Census. Including the
15 citizenship question will result in undercounting in San Jose as its residents—both
16 non-citizens and their citizen relatives—are discouraged from responding. The
17 inaccurate data will in turn result in funding allocations that will disadvantage San
18 Jose and its residents.

19 12. BAJI will also be harmed due to the diversion of essential and limited
20 resources—including time and money—from other important matters that it
21 ordinarily would have been addressing through dialogues, presentations,
22 workshops, publications, technical assistance and trainings to build alliances
23 between African American and immigrant communities, in order to educate its
24 diverse constituents regarding issues related to the census citizenship questions.
25 Like the residents in San Jose, the minority and immigrant communities BAJI
26 serves will also be deterred from responding to the 2020 Census because of the
27 citizenship question. Thus, BAJI will have to further divert resources to combat
28 any resulting political dilution, loss of federal funding, and other harmful effects

1 suffered by the communities it serves. BAJI is further injured because Defendants’
2 activities impair BAJI’s ability to carry out its mission to advance equity and justice
3 for minority and immigrant communities through its advocacy work.

4 13. San Jose and BAJI therefore seek a declaration that including the
5 citizenship question on the 2020 Census violates the Constitution’s “actual
6 Enumeration” mandate and the APA’s prohibition against “arbitrary and
7 capricious” agency action. Further, to avoid irreparable harm, San Jose and BAJI
8 seek an injunction prohibiting the Bureau from including the citizenship question
9 on the 2020 Census.

10 **JURISDICTION AND VENUE**

11 14. This Court has subject matter jurisdiction in this action under 28
12 U.S.C. § 1331 (action arising under the laws of the United States), 28 U.S.C. §
13 1361 (action to compel officer or agency to perform duty owed to Plaintiff), and 5
14 U.S.C. §§ 701-706 (judicial review under APA). An actual controversy exists
15 between the parties within the meaning of 28 U.S.C. § 2201(a), and this Court may
16 grant declaratory relief, injunctive relief, and other relief against Defendants
17 pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. §§ 705–706.

18 15. Defendants’ submission of the final census questions to Congress no
19 later than March 31, 2018, is a final agency action and is therefore judicially
20 reviewable under the APA. 5 U.S.C. §§ 704, 706.

21 16. Venue properly lies within the Northern District of California because
22 Plaintiff, the City of San Jose, is a public entity in this judicial district; BAJI, a
23 California nonprofit corporation, maintains an office and provides services in this
24 judicial district; and a substantial part of the events or omissions giving rise to this
25 action will occur or have occurred in this district. 28 U.S.C. § 1391(e).

26 //
27 //
28 //

INTRADISTRICT ASSIGNMENT

1
2 17. Under Civil Local Rules 3-5(b) and 3-2(c), Plaintiffs allege that
3 assignment of this action to the San Jose division of this Court is proper. Plaintiffs
4 further allege that transfer of this action to the San Francisco division of this Court
5 may be proper in light of a pending related action, *State of California v. Wilbur J.*
6 *Ross, Jr.*, Case No. 3:18-cv-01865, to serve the interests of justice and for the
7 convenience of parties and witnesses.

PARTIES

8
9 18. Plaintiff City of San Jose is a municipal corporation, organized as a
10 Charter City under the California Constitution and the laws of the State of
11 California, and is located in the County of Santa Clara. It is the tenth-largest city in
12 the United States.

13 19. What is today San Jose had originally been home to the Ohlone
14 Indians for hundreds of years. San Jose was founded by Spain on November 29,
15 1777, as El Pueblo de San Jose de Guadalupe. San Jose was California's first
16 civilian settlement. In 1821, San Jose became part of the newly independent
17 country of Mexico. After the Treaty of Guadalupe Hidalgo ceded California to the
18 United States at the end of the Mexican-American War in 1848, San Jose became
19 California's first incorporated U.S. city. Since its founding, San Jose has always
20 been a home to immigrants, with nearly 40% of its current population having been
21 born in another country.

22 20. San Jose is bringing this action on its own behalf as a municipal
23 corporation. *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1200 (9th Cir. 2004); 5
24 U.S.C. § 551(2). San Jose has standing because Defendants' actions have caused
25 and will continue to cause San Jose to suffer concrete and substantial harm, and
26 such harm would be redressed by this lawsuit. San Jose has an interest in ensuring
27 that the 2020 Census counts all of its residents. There are no other adequate
28

1 remedies available because the failure to capture accurate data in the 2020 Census
2 cannot be reversed.

3 21. Plaintiff BAJI is a California nonprofit corporation with offices in
4 Oakland, California and Los Angeles, California, as well as in New York, New
5 York, and Atlanta, Georgia. BAJI was founded in April 2006 in response to the
6 mobilization of immigrant communities and their supporters against repressive
7 immigration bills that were pending before the United States Congress at the time.
8 Propelled by the belief that a thriving multiracial democracy requires racial, social,
9 and economic justice for all, BAJI educates and engages African Americans and
10 Black immigrants to organize and advocate for equality and justice in laws and in
11 their communities through dialogues, presentations, workshops, publications,
12 technical assistance, and trainings.

13 22. BAJI also builds coalitions and initiates campaigns to advance racial
14 justice, and, at the local and regional levels, provides its partner organizations with
15 relevant training and technical assistance. BAJI's flagship project is the
16 advancement of just immigration policies and the promotion of cultural shifts
17 necessary to secure equal rights for its members and their communities.

18 23. BAJI has direct organizational standing to bring suit because its
19 essential and limited resources—including time and money—will be diverted from
20 other important matters that it ordinarily would have been addressing through
21 dialogues, presentations, workshops, publications, technical assistance, and
22 trainings to build alliances between African American and immigrant communities,
23 in order to educate its constituents regarding, and counteract the harmful effect of,
24 the inclusion of citizenship questions into the 2020 Census. *Fair Housing of Marin*
25 *v. Combs*, 285 F.3d 899, 905 (9th Cir. 2002); *see also Havens Realty Corp. v.*
26 *Coleman*, 455 U.S. 363 (1982). Additionally, the use of the 2020 Census to
27 question U.S. residents regarding their citizenship status, and associated effects
28 such as discouraging responses, producing fear and anxiety in minority and

1 immigrant communities, and reducing both congressional representation and federal
 2 funding, frustrate and undermine BAJI's core mission and will require a further
 3 expenditures to investigate the scope of these harms and rigorously mitigate them.
 4 *Id.* As a result, BAJI has suffered and will continue to suffer concrete and
 5 substantial harm as a result of Defendants' actions. There are no other adequate
 6 remedies available because the failure to capture accurate data in the 2020 Census
 7 cannot be reversed.

8 24. Defendant Wilbur L. Ross is the Secretary of the U.S. Department of
 9 Commerce and is sued in his official capacity. Secretary Ross is responsible for
 10 fulfilling the Department of Commerce's duties under the Constitution, the APA,
 11 and the Census Act.

12 25. Defendant U.S. Department of Commerce is a federal agency. The
 13 Department of Commerce, led by Secretary Ross, oversees the Bureau, which is
 14 tasked with executing the 2020 Census.

15 26. Defendant Dr. Ron Jarmin is responsible for performing the non-
 16 exclusive functions and duties of the Director of the U.S. Census Bureau and is
 17 sued in his official capacity. Dr. Jarmin's duties include ensuring that the Bureau
 18 executes the 2020 Census.

19 27. Defendant U.S. Census Bureau, the federal government's largest
 20 statistical agency, is an agency within the Department of Commerce, established by
 21 Title 13 of the United States Code. *See* 13 U.S.C. §§ 1 *et seq.*

SUMMARY OF ALLEGATIONS

A. Origin and Purpose of the Census

24 28. The U.S. Constitution provides legal authority for the census, which it
 25 refers to as "Enumeration." Article I, section 2, clause 3 of the Constitution
 26 provides, in relevant part, that "Representatives . . . shall be apportioned among the
 27 several States which may be included within this Union, according to their
 28 respective Numbers The actual Enumeration shall be made within three Years

1 after the first Meeting of the Congress of the United States, and within every
2 subsequent Term of ten Years, in such Manner as they shall by Law direct.” The
3 Fourteenth Amendment to the Constitution makes clear that the enumeration must
4 include “the whole number of persons in each state.” The Constitution therefore
5 requires that the enumeration make no distinction between citizens, documented
6 immigrants, or undocumented immigrants. All are persons.

7 29. Congress has delegated the taking of the census to the Secretary of
8 Commerce. Under 13 U.S.C. § 141(a), “[t]he Secretary shall, in the year 1980 and
9 every 10 years thereafter, take a decennial census of population as of the first day of
10 April of such year.” The Secretary has authority to conduct the census “in such
11 form and content as he may determine.” *Id.* Likewise, the Bureau Director “is
12 necessarily invested with discretion in matters of form and procedure when these
13 are not specifically provided for by law.” *U.S. ex rel. City of Atlanta v. Steuart*, 47
14 F.2d 979, 982 (D.C. Cir. 1931).

15 30. Defendants’ discretion in taking the census is not unfettered and, in
16 particular, is subject to congressional oversight. Three years before the census, the
17 Secretary must submit to Congress a report proposing the subjects to be included in
18 the census. 13 U.S.C. § 141(f)(1). Two years before the census, the Secretary
19 must submit to Congress the specific questions to be included in the census. *Id.*
20 § 141(f)(2). The Secretary may later modify the subjects or questions only if he
21 submits a report to Congress finding that “new circumstances exist which
22 necessitate” the modification. *Id.* § 141(f)(3).

23 31. Defendants’ discretion in taking the census is also subject to the APA.
24 Under the APA, Defendants must ensure that any agency action is not “arbitrary,
25 capricious, an abuse of discretion, or otherwise not in accordance with law,”
26 “contrary to constitutional right, power, privilege or immunity,” or “in excess of
27 statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C.
28 § 706.

1 32. Congress, states, and municipalities rely on census data for many
2 purposes, including allocation of federal funding and state and local legislative
3 districting. *Wisconsin v. City of New York*, 517 U.S. 1, 5-6 (1996); *City of Los*
4 *Angeles v. U.S. Dep't. of Commerce*, 307 F.3d 859, 864 (9th Cir. 2002).

5 33. Under the direction of the Secretary of Commerce and the Bureau
6 Director, the Bureau conducts the constitutionally required census every ten years
7 by counting all U.S. residents in the place where they live. Besides using the
8 results of the decennial census for the constitutional purpose of determining the
9 number of seats for each state in the House of Representatives, the federal
10 government relies on census data to determine how to distribute billions of dollars
11 of funding each year, including funding for Medicaid, Medicare Part B, the
12 Supplemental Nutrition Assistance Program (SNAP), the State Children's Health
13 Insurance Program (S-CHIP), and the Highway Planning and Construction
14 Program.

15 34. The Bureau last included a citizenship question in the decennial census
16 questionnaire in 1950.

17 35. From 1970 to 2000, the Bureau employed two questionnaires: a "short
18 form" and a "long form." The short-form questionnaire, which most households
19 received, included a "minimum number of questions" about the race, ethnicity, age,
20 and gender of each occupant. Approximately one out of every six households
21 received the long-form questionnaire, which collected a broader array of social,
22 housing, economic, education, disability, employment, citizenship, and income
23 information.

24 36. After the 2000 Census, the Bureau discontinued the long-form
25 questionnaire and replaced it, to some degree, with the American Community
26 Survey ("ACS"). Unlike the decennial census, the ACS is not required by the
27 Constitution, and its results do not constitute the enumeration required by the
28 Constitution. While the decennial census requires an actual enumeration of all

1 persons residing within the United States, the ACS surveys a statistical sample of
 2 the population—over 3.5 million households receive the ACS annually.¹ The ACS
 3 already contains a citizenship question.

4 37. On March 28, 2017, Secretary Ross timely submitted a report
 5 containing the subjects proposed to be included in the 2020 Census. The subjects,
 6 which were unchanged from the 2010 Census, did not include citizenship or
 7 immigration status.

8 **B. The Bureau’s Process for Developing Its Survey Content in**
 9 **Advance of the Decennial Census**

10 38. The 2020 Census has been designed and developed in an iterative
 11 fashion, incorporating results from various tests conducted over the past decade.²

12 39. The Bureau develops and tests the content, specific language, order,
 13 and layout of the census questionnaire to improve the accuracy of the enumeration.
 14 In addition to fulfilling the Bureau’s constitutional duty, this development process
 15 involves multiple steps that ensure the accuracy, reliability, and objectivity of the
 16 final data, as consistent with prior Bureau practice and as required by the
 17 Information Quality Act. Consolidated Appropriations Act, 2001, Pub. L. No. 106-
 18 554, § 515, 114 Stat. 2763 (Dec. 21, 2000).

19 40. Government-wide statistical standards adopted under the Information
 20 Quality Act require the Commerce Department and the Bureau to carefully design
 21 the census questionnaire to “minimize respondent burden while maximizing data
 22 quality” and to “achieve the highest rates of response.”³ The standards also require
 23 testing each component of the questionnaire to ensure that it operates as intended.
 24

25 ¹ See U.S. Census Bureau, *American Community Survey Information Guide*, (Oct. 2017),
 26 [https://www.census.gov/content/dam/Census/programs-](https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS_Information_Guide.pdf)
[surveys/acs/about/ACS_Information_Guide.pdf](https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS_Information_Guide.pdf).

27 ² U.S. Census Bureau, *2020 Census Operational Plan* (Sept. 2017), [https://www2.](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan3.pdf)
 28 [census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan3.pdf)
[plan3.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan3.pdf).

³ Office of Mgmt. and Budget, *Statistical Policy Directive No. 2: Standards and Guidelines for*

1 41. The questionnaire development process and the evaluation of changes
2 to individual inquiries take several years to complete. For example, the Bureau has
3 spent almost ten years developing and testing the content, specific language, and
4 layout of just one proposed change to the question regarding race and ethnicity on
5 the 2020 questionnaire. From 2008 through 2012, the Bureau conducted
6 comprehensive research into the possibility of combining race and ethnicity into
7 one question on the 2020 Census. The research focused on whether this proposed
8 change would improve respondent understanding of the question and improve the
9 accuracy of race and ethnicity data collected.⁴

10 42. The Bureau then spent several years designing and conducting tests in
11 different geographical areas on the proposed change to the question regarding race
12 and ethnicity to explore different alternatives for the language, layout, and
13 instructions regarding a revised question. The testing was designed to assess the
14 accuracy and reliability of alternative forms of asking the proposed question. In
15 2016, the Bureau conducted outreach to federal agencies and to the public to obtain
16 feedback on the proposed change.⁵ For example, in August 2016, BAJI organized a
17 meeting between representatives of the Census Bureau and Latinx and African
18 diaspora community leaders in New York to discuss possible changes to the 2020
19 Census questionnaire that could provide respondents with more accurate options to
20 self-identify their race and/or ethnicity.⁶

21 43. The Bureau began conducting major testing of proposed changes to the
22 2020 Census questionnaire with the 2014 Census Test. At that time, the Bureau
23 assessed wording changes to the race and Hispanic origin question, as well as new
24

25 *Statistical Surveys* §§ 1.3, 1.4, 2.3.1 (2006).

26 ⁴ U.S. Census Bureau, *Research to Improve Data on Race and Ethnicity* (2016),
<https://www.census.gov/about/our-research/race-ethnicity.html>.

27 ⁵ *Id.*

28 ⁶ Ramon Taylor, *Race Question in US Census Draws Scrutiny, Criticism*, Voice of America News
(Aug. 23, 2016), <https://www.voanews.com/a/race-question-us-census-draws-scrutiny-criticism/3477850.html>.

1 potential response categories for married and unmarried relationships. The 2014
2 Census Test did not assess the content, wording, or layout of a question regarding
3 citizenship status.

4 44. The 2015 National Content Test was an opportunity for the Bureau to
5 “compare different versions of questions” prior to making final decisions prior to
6 the 2020 Census.⁷ While the Bureau tested changes to questions related to race and
7 ethnicity, the Bureau did not design tests of language, layout, or instructions for a
8 question regarding citizenship status. The Bureau announced the results of this test
9 in early March 2017, none of which related to citizenship.⁸

10 45. The Bureau had other opportunities during the major tests in 2016 and
11 April 2017 to test its questionnaire for the 2020 Census. However, the
12 questionnaires assessed in these tests did not include a question regarding
13 citizenship status. On information and belief, the Bureau did not begin considering
14 whether to add a demand for citizenship information to the 2020 Census until
15 approximately eight months after it began conducting major testing in 2017.

16 46. The Bureau concluded its process designing the race and ethnicity
17 questions at the end of 2017, after nine years of evaluation and testing, because it
18 “needed to make a decision on the design of the race and ethnicity questions by
19 December 31, 2017, in order to prepare for the 2020 Census systems, and deliver
20 the final 2020 Census question wording to Congress by March 31, 2018.”⁹

21 47. The timing of Secretary Ross’s late decision to include the citizenship
22 question prevented the Bureau from including the question in its only full trial run

23 _____
24 ⁷ U.S. Census Bureau, *Information Collection Request: 2015 National Content Test*, 80 Fed. Reg.
29,609, 29,610 (May 22, 2015).

25 ⁸ U.S. Census Bureau, *2015 National Content Test Race and Ethnicity Analysis Report* (Feb. 28,
2017), [https://www2.census.gov/programs-surveys/decennial/2020/program-
26 management/final-analysis-reports/2015nct-race-ethnicity-analysis.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2015nct-race-ethnicity-analysis.pdf).

27 ⁹ U.S. Census Bureau, *2020 Census Program Memorandum Series: 2018.02, Using Two Separate
28 Questions for Race and Ethnicity in 2018 End-to-End Census Test and 2020 Census* (Jan. 26,
2018), [https://www2.census.gov/programs-surveys/decennial/2020/program-
management/memo-series/2020-memo-2018_02.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2018_02.pdf).

1 of the census count, the 2018 End-to-End Census Test, which commenced its final
2 phase in March 2018 in Providence County, Rhode Island.¹⁰ The End-to-End
3 Census Test is a dress rehearsal for the 2020 Census, in which the Bureau tests and
4 validates all major components, including operations, procedures, systems, and
5 infrastructure. The 2018 End-to-End Census Test does not include any request for
6 citizenship information on the questionnaire sent to households. As a result, none
7 of the major tests for the 2020 Census will have assessed the content, language,
8 layout, or order of the citizenship question on the questionnaire, or the impact that
9 the question regarding citizenship status would have on response rates and
10 accuracy.

11 48. To date, the Bureau has not tested the language or layout of the
12 citizenship question in the context of the decennial census questionnaire.

13 **C. San Jose's Efforts to Prepare for the 2020 Census**

14 49. The City of San Jose is taking action ahead of the 2020 Census to
15 ensure that as many of its residents as possible are accurately counted. Even
16 without the addition of a question regarding citizenship status, past censuses have
17 undercounted San Jose's population, costing it millions of dollars. In 2010, the
18 Bureau counted 945,942 residents of San Jose. San Jose estimates that this
19 reflected an undercounting of as many as 70,000 residents, resulting in annual
20 losses of approximately \$20 million in federal funds.¹¹ With the addition of the
21 citizenship question, the undercounting and resulting loss will likely be even more
22 significant.

23
24
25 ¹⁰ Michael Wines, *Census Bureau's Own Expert Panel Rebukes Decision to Add Citizenship*
26 *Question*, N.Y. Times (Mar. 30, 2018), <https://www.nytimes.com/2018/03/30/us/census-bureau-citizenship.html>.

27 ¹¹ Maureen Naylor, *Effort under way for accurate 2020 Census count in San Jose*, FOX KTVU
28 News (Mar. 8, 2018), <http://www.ktvu.com/news/effort-underway-for-accurate-2020-census-count-in-san-jose>.

1 50. San Jose has many foreign-born residents, including undocumented
2 immigrants, who came to the City to live, work, and raise families. Indeed, the City
3 has been an extremely diverse region since the mid-1800s—a factor that has led to
4 immigrants gravitating to San Jose, where there are already established immigrant
5 communities. Waves of immigrants, from China, Mexico, Vietnam, India, Europe,
6 and elsewhere, have played a fundamental role in the creation of three profoundly
7 different industries: first mining, then agriculture, and finally technology in San
8 Jose and the Silicon Valley.¹²

9 51. According to the Pew Research Center, San Jose is among the twenty
10 metropolitan areas of the United States with the largest number of undocumented
11 immigrants. As of February 2017, the Pew Research Center estimates that as much
12 as 17% of San Jose’s population consists of undocumented immigrants.¹³

13 52. San Jose city leaders are concerned that recent raids by Immigration
14 and Customs Enforcement (“ICE”) could hinder an accurate census count with
15 undocumented families fearful of deportation.

16 53. Even without the added burden of a citizenship question, the U.S.
17 Census Bureau reports that households with immigrant laborers “may not be
18 willing to respond to the census or able to provide data for their housemates.”¹⁴

19 54. To improve the accuracy of the 2020 Census in San Jose, on December
20 2, 2017, representatives from six San Jose nonprofit organizations joined San Jose
21 and the nonprofit organization Cities of Service to test a new community address-
22 mapping methodology and text-messaging tool that will help the City prepare for
23

24 ¹² City of San Jose, *Envision San Jose 2040: A Brief History of San Jose* (Aug. 8, 2013),
25 <http://www.sanjoseca.gov/DocumentCenter/View/19862>.

26 ¹³ Jeffrey S. Passel and D’Vera Cohn, *20 metro areas are home to six-in-ten unauthorized*
27 *immigrants in U.S.*, Pew Research Center (Feb. 9, 2017), [http://www.pewresearch.org/fact-](http://www.pewresearch.org/fact-tank/2017/02/09/us-metro-areas-unauthorized-immigrants/)
28 [tank/2017/02/09/us-metro-areas-unauthorized-immigrants/](http://www.pewresearch.org/fact-tank/2017/02/09/us-metro-areas-unauthorized-immigrants/).

¹⁴ Herbert F. Stackhouse and Sarah Brady, *Census 2000 Mail Return Rates Final Report*, U.S.
Census Bureau (Jan. 30, 2003), <https://www.census.gov/pred/www/rpts/A.7.b.pdf>.

1 the 2020 Census.¹⁵ San Jose will rely on community volunteers in spring 2018 to
2 scour neighborhoods where it suspects many families are doubled up or living in
3 unpermitted housing.¹⁶ The volunteers will use a texting app San Jose tested in
4 December to identify unofficial units. The City will then flag them on the Bureau's
5 master address list for San Jose.

6 55. San Jose has taken steps to increase participation in the 2020 Census,
7 in part because of fears that immigrants will be undercounted, particularly in the
8 current political climate. In an article on cities worried about census
9 undercounting, the mayor of San Jose was quoted in *The New York Times* as
10 stating, "Rumors of ICE raids are on Spanish-speaking radio every other day, and
11 you've got this enormous fear from residents about talking to the government. You
12 do everything you can to communicate to people, 'Hey you're safe with the city,
13 please talk to us.'"¹⁷

14 56. On February 6, 2018, the mayor of San Jose signed a letter to
15 Secretary Wilbur Ross urging him not to add a question on citizenship to the
16 census, noting that "experts, elected officials, and community leaders all agree that
17 adding a question on citizenship in particular will lower initial response."¹⁸

18 57. Santa Clara County, which includes San Jose, also has taken steps to
19 increase participation in the 2020 Census and voice its concern about the inclusion
20 of a citizenship question. On February 16, 2018, Santa Clara County filed a
21

22 ¹⁵ Rosalind Becker, *City of San José Brings Tech and People Together to Prepare for 2020*
23 *Census*, Cities of Service (Dec. 14, 2017), [https://citiesofservice.org/stories/city-san-jose-brings-
tech-people-together-prepare-2020-census/](https://citiesofservice.org/stories/city-san-jose-brings-tech-people-together-prepare-2020-census/).

24 ¹⁶ Emily Badger, *Extra Doorbells, Satellite Dishes: How Cities Search for People the Census*
25 *May Miss*, N.Y. Times (Feb. 22, 2018), [https://www.nytimes.com/2018/02/22/upshot/census-
cities-undercounting-immigrants.html](https://www.nytimes.com/2018/02/22/upshot/census-cities-undercounting-immigrants.html).

26 ¹⁷ *Id.*

27 ¹⁸ Mitchell J. Landrieu, New Orleans Mayor, et al., The United States Conference of Mayors, to
28 the Honorable Wilbur Ross, Secretary of Commerce, U.S. Dep't. of Commerce (Feb. 6, 2018),
<http://www.usmayors.org/wp-content/uploads/2018/02/20180206-census-letter.pdf>.

1 Freedom of Information Act request concerning the possible inclusion of a
 2 citizenship question on the 2020 Census and information on how the Bureau plans
 3 to protect the privacy of individuals who respond to the Census.¹⁹ Santa Clara
 4 County noted in its press release that “[e]xperts have emphasized the potential
 5 dampening effect of such a question [on citizenship] on census response rates in
 6 diverse communities like Santa Clara County.”²⁰

7 58. San Jose has spent approximately \$50,000 on its efforts to prepare for
 8 the 2020 Census to date, and it anticipates substantial additional costs.

9 **D. BAJI Advocates for Accurate Census Data for Minority**
 10 **Communities and Proper Representation of the Growing Black**
 11 **Immigrant Population**

12 59. BAJI has consistently advocated for equitable political representation
 13 of minority and immigrant communities. Its 2016 meeting with Bureau
 14 representatives to press for a 2020 Census questionnaire that could obtain more
 15 accurate data regarding the race and ethnicity of its respondents was an extension of
 16 BAJI’s efforts to bolster federal funding for historically undercounted and under-
 17 resourced minority and immigrant communities.

18 60. BAJI has also partnered with the Immigrant Rights Clinic at New York
 19 University School of Law to produce a comprehensive, statistical report on the
 20 growing population of Black or African American immigrants in the United
 21 States.²¹ The report drew attention to the social, political, and economic conditions

22 _____
 23 ¹⁹ Letter from James R. Williams, County Counsel, and Danielle L. Goldstein, Deputy County
 24 Counsel, County of Santa Clara, to Vernon E. Curry, Freedom of Information Act Officer, U.S.
 25 Census Bureau (Feb. 16, 2018),

<https://www.sccgov.org/sites/opa/newsroom/Documents/Census%20FIOA%20request.pdf>.

26 ²⁰ Press Release, Office of the County Counsel, County of Santa Clara, County of Santa Clara
 27 Files Request for Information on Possible Census Citizenship Question and Privacy Concerns
 28 (Feb. 16, 2018), <https://www.sccgov.org/sites/opa/newsroom/Documents/FOIA%20press%20release%202.16.18%20FINAL.pdf>.

²¹ Juliana Morgan-Trostle and Kexin Zheng, New York University School of Law Immigrant

1 of this diverse population and provides federal, state, and local recommendations
 2 based on this data. Based on its broad experience advancing equal rights for
 3 minority and immigrant communities, BAJI has warned the public that the
 4 inclusion of the citizenship question in the 2020 Census will instill fear and
 5 intimidation in Black immigrant communities and suppress their political
 6 representation. BAJI has diverted, and will continue to divert, resources to raise
 7 awareness regarding the new census citizenship questions and the related issues.

8 **E. The U.S. Department of Justice’s Request to Add a Citizenship**
 9 **Question to the 2020 Census**

10 61. Nearly nine months after the subjects for the 2020 Census had been
 11 identified, on December 12, 2017, the General Counsel of the Justice and
 12 Management Division of the U.S. Department of Justice sent a letter to the Bureau
 13 requesting the inclusion of a citizenship question on the 2020 Census. The
 14 Department of Justice’s purported rationale for requesting the addition of a
 15 citizenship question was to assist the Department of Justice with enforcing Section
 16 2 of the Voting Rights Act.

17 62. On March 26, 2018, setting aside decades of practice regarding the
 18 decennial census, Secretary Ross and the Department of Commerce announced that
 19 the final list of census questions that they will submit to Congress will include a
 20 question on citizenship status. Specifically, the question will ask, for every
 21 member of every household, whether that person is a citizen of the United States.
 22 The question also will ask whether a citizen was naturalized, born “in the United
 23 States,” born “in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern
 24 Marianas,” or “born abroad to U.S. citizen parent or parents.”²²

25
 26 Rights Clinic, and Carl Lipscombe, Black Alliance for Just Immigration, *The State of Black*
Immigrants (2016), <http://www.stateofblackimmigrants.com/assets/sobi-fullreport-jan22.pdf>.

27 ²² U.S. Census Bureau, *Questions Planned for the 2020 Census & American Community Survey*
 (Mar. 29, 2018) at 7,
 28 <https://www2.census.gov/library/publications/decennial/2020/operations/planned-questions-2020-acs.pdf>.

1 63. Consistent with the Department of Justice’s December 2017 letter, the
2 purported rationale for including the citizenship question on the 2020 Census is that
3 “[k]nowing how many people reside in the community and how many of those
4 people are citizens, in combination with other information, provides the statistical
5 information that helps the government enforce Section 2 of the Voting Rights Act
6 and its protections against discrimination in voting.”²³ But including a citizenship
7 question on the 2020 Census is likely to decrease the accuracy of the 2020 Census
8 and undermine the core objective of the Census by deterring responses from non-
9 citizens and their relatives, many of whom are members of the minority populations
10 that Section 2 of the Voting Rights Act is designed to protect. Thus, including the
11 question actually *undermines* the Voting Rights Act’s purpose of ensuring fair
12 representation for all communities. *See* Ex. 1. Further, the detail requested by the
13 citizenship questions, concerning whether respondents were citizens at birth or
14 naturalized, or where citizens were born, can serve no purpose whatsoever in the
15 enforcement of Section 2 of the Voting Rights Act.

16 64. In his March 26, 2018, letter, Secretary Ross stated that, to address the
17 Department of Justice’s request, he had determined that the best option was to add
18 the ACS citizenship question to the decennial census. Underscoring the arbitrary
19 and capricious nature of his decision, Secretary Ross speculated that the citizenship
20 question may not cause an undercount because “there is no information available to
21 determine the number of people who would in fact not respond due to a citizenship
22 question being added, and no one has identified any mechanism for making such a
23 determination.” Ex. 2 at 5. Secretary Ross concluded illogically that “the need for
24 accurate citizenship data” was worth the risk of an undercount. *Id.*

25 65. Defendants failed to identify and explain any “new circumstances” that
26 “necessitated” this modification to the subjects Secretary Ross submitted to
27 Congress in 2017, as required by statute. 13 U.S.C. § 141(f)(3).

28 ²³ *Id.*

1 66. The Census does not produce citizenship data at a level below the
2 block group, out of privacy concerns. By including the citizenship data for all
3 households, the data would be available at the census block level. In some cases, a
4 census block only includes one household and, where that is the case, the
5 citizenship status of the individuals in that household would be in the public
6 domain.

7 67. In the over fifty years since the Voting Rights Act’s enactment, the
8 Bureau has never asked about citizenship when conducting its 100% enumeration
9 of the population. As Kenneth Prewitt, a director of the Bureau under President
10 Clinton, explained recently to *The New York Times*, “It’s certainly unnecessary
11 The Voting Rights Act is being administered very well with data from the
12 American Community Survey. The Justice Department has ruled on that a number
13 of times over the last 15 years.”²⁴

14 68. Moreover, in voting rights litigation following the 2010 Census,
15 including in at least one case brought by the Department of Justice, federal courts
16 were able to rely on the citizenship data contained in the ACS in analyzing claims
17 under Section 2 of the Voting Rights Act. Courts regularly rely on ACS data to
18 calculate “citizen voting age population.” *See, e.g., Perez v. Abbott*, 250 F. Supp.
19 3d 123, 133 (W.D. Tex. 2017); *Montes v. City of Yakima*, 40 F. Supp. 3d 1377,
20 1392 (E.D. Wash. 2014); *Cisneros v. Pasadena Indep. Sch. Dist.*, No. 4:12-CV-
21 2579, 2014 WL 1668500, at *8 (S.D. Tex. Apr. 25, 2014); *Rodriguez v. Harris*
22 *County*, 964 F. Supp. 2d 686, 727 (S.D. Tex. 2013), *aff’d sub nom. Gonzalez v.*
23 *Harris County*, 601 F. App’x 255 (5th Cir. 2015).

24 69. Data collected through the decennial census would not provide a
25 “reliable calculation” of “citizen voting age population” in any event, because

26 _____
27 ²⁴ Michael Wines and Emily Baumgaertner, *At Least Twelve States to Sue Trump Administration*
28 *Over Census Citizenship Question*, *N.Y. Times* (Mar. 27, 2018),
<https://www.nytimes.com/2018/03/27/us/census-citizenship-question.html>.

1 citizenship information collected decennially will quickly become outdated and less
2 reliable over the course of the subsequent decade.

3 70. Including a question regarding citizenship status on the 2020 Census
4 will undermine, not advance, the goals of the Voting Rights Act. A question
5 regarding citizenship that leads to a systematic undercount of minority populations
6 across the United States will impair fair representation of those groups and the
7 states in which they live. As a result, the purported reasoning that the citizenship
8 question is necessary for enforcement of Section 2 of the Voting Rights Act is a
9 pretext for other unstated and ulterior purposes.

10 **F. The Chilling Effect of Adding the Citizenship Question to the**
11 **Census Form**

12 71. The Bureau is well aware that adding the citizenship question to the
13 census form will directly cause an undercount in the 2020 Census.

14 72. The Bureau itself has recognized that minority and immigrant
15 populations have historically been challenging groups to count accurately in the
16 decennial census, due to issues such as language barriers and distrust of
17 government.²⁵

18 73. The risk of undercounting is pronounced in the current political
19 environment. San Jose residents and members of the communities served by BAJI
20 will not consider whether to respond to the citizenship question in a vacuum.
21 Rather, the current Administration's heightened anti-immigrant rhetoric and pattern
22 of policies and actions that target immigrant communities will inevitably color
23 people's decisions. These policies and actions include the rescission of the
24 Deferred Action for Childhood Arrivals program; the ban on travel from several
25 majority-Muslim countries; the suspension on refugee admissions to the United
26

27 ²⁵ See U.S. Census Bureau, *2020 Census Operational Plan* (Sept. 2017), [https://](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan3.pdf)
28 www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan3.pdf.

1 States; the termination of special protections from removal for migrants from
2 nations experiencing war and natural disasters; increased detention of
3 undocumented migrants; efforts to suspend or terminate federal funding to localities
4 that elect to limit their participation in federal immigration enforcement efforts; and
5 efforts to build a physical wall along the Mexico-U.S. border, among other actions.

6 74. The Administration's anti-immigrant rhetoric has been prevalent in the
7 years leading up to the 2020 Census. For example, Donald Trump during his
8 campaign for President and since becoming President has made clear his animus
9 toward immigrants, documented and otherwise. Leaders in his Administration,
10 including at the Department of Justice and Department of Homeland Security, also
11 have made anti-immigrant statements.

12 75. Candidate Trump repeatedly denigrated Mexican immigrants in
13 particular, even comparing them to rapists in his presidential bid announcement:
14 "When Mexico sends its people, they're not sending their best. They're not sending
15 you. They're not sending you. They're sending people that have lots of problems
16 and they're bringing those problems with us. They're bringing drugs. They're
17 bringing crime. They're rapists. And some, I assume are good people."²⁶

18 76. During the first Republican presidential debate, candidate Trump
19 doubled down on his disparaging comments about Mexican immigrants, claiming
20 that "[t]he Mexican government is much smarter, much sharper, much more
21 cunning. And they send the bad ones over because they don't want to pay for them.
22 They don't want to take care of them."²⁷

23
24
25 ²⁶ *The Washington Post Staff, Full text: Donald Trump announces a presidential bid* (June 16,
26 2015), https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.d9c21741c206.

27 ²⁷ *Suzanne Gamboa, Trump Claims in Debate Mexico 'Sends the Bad Ones' to U.S.*, NBC News
28 (Aug. 6, 2015), <https://www.nbcnews.com/news/latino/trump-claims-debate-mexico-sends-bad-ones-u-sn405661>.

1 77. During another presidential debate in October 2016, candidate Trump
2 once again broadly assaulted immigrant families and communities with his views
3 on immigration by declaring, “We have some bad hombres here and we’re going to
4 get them out.”²⁸

5 78. ICE’s Acting Director, Thomas Homan, testified in June 2017 that “If
6 you’re in this country illegally, and you committed a crime by entering this country,
7 you should be uncomfortable. You should look over your shoulder.”²⁹

8 79. United States Attorney General Jeff Sessions stated on Fox News in
9 April 2017 that “[e]verybody in the country illegally is subject to being deported, so
10 people come here and they stay here a few years and somehow they think they are
11 not subject to being deported—well, they are. The policy is that if people are here
12 unlawfully, they’re subject to being deported. Our priority is clear . . . we can’t
13 promise people who are here unlawfully that they’re not going to be deported.”³⁰

14 80. The Bureau itself expressed concern that anti-immigrant rhetoric by
15 elected and appointed officials and the media would affect Census participation.
16 Indeed, the Bureau’s own 2017 study revealed “an unprecedented ground swell in
17 confidentiality and data sharing concerns, particularly among immigrants or those
18 who live with immigrants,” and that these concerns “may present a barrier to
19 participation in the 2020 Census.”³¹ Ex. 3 at 15 [Meyers Report]. The studies’

20 _____
21 ²⁸ Elizabeth Gurdus, *Trump: ‘We have some bad hombres and we’re going to get them out,’*
22 CNBC (Oct. 19, 2016), [https://www.cnbc.com/2016/10/19/trump-we-have-some-bad-hombres-
and-were-going-to-get-them-out.html](https://www.cnbc.com/2016/10/19/trump-we-have-some-bad-hombres-and-were-going-to-get-them-out.html).

23 ²⁹ Maria Sacchetti, *ICE chief tells lawmakers agency needs much more money for immigration*
24 *arrests*, *The Washington Post* (June 13, 2017), [https://www.washingtonpost.com/local/social-
issues/ice-chief-tells-lawmakers-agency-needs-much-more-money-for-immigration-
arrests/2017/06/13/86651e86-5054-11e7-b064-
828ba60fbb98_story.html?utm_term=.bdab82b48326](https://www.washingtonpost.com/local/social-issues/ice-chief-tells-lawmakers-agency-needs-much-more-money-for-immigration-arrests/2017/06/13/86651e86-5054-11e7-b064-828ba60fbb98_story.html?utm_term=.bdab82b48326).

25 ³⁰ Adam Shaw, *Sessions defends immigration policies after reported ‘DREAMer’ deportation*,
26 FOX News (Apr. 19, 2017), [http://www.foxnews.com/politics/2017/04/19/sessions-defends-
immigration-policies-after-reported-dreamer-deportation.html](http://www.foxnews.com/politics/2017/04/19/sessions-defends-immigration-policies-after-reported-dreamer-deportation.html).

27 ³¹ See Mikelyn Meyers, Center for Survey Management, U.S. Census Bureau, *Presentation on*
28 *Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality*

1 respondents “express[ed] new concerns about topics like the ‘Muslim ban,’
 2 discomfort ‘registering’ other household members by reporting their demographic
 3 characteristics, the dissolution of the ‘DACA’ (Deferred Action for Childhood
 4 Arrival) program, repeated references to Immigration and Customs Enforcement
 5 (ICE), etc.”³² Ex. 4 at 1 [Memorandum on the Meyers Report].

6 81. The Bureau itself has reported heightened privacy concerns from
 7 members of the public when they are asked to respond to census questionnaires, as
 8 reflected in the Meyers Report:

9 **• Respondent Fears**

- 10 ○ “The possibility that the Census could give my information to
 11 internal security and immigration could come and arrest me for not
 12 having documents terrifies me.” (Spanish interview)
 13 ○ “Particularly with our current political climate, the Latino
 14 community will not sign up because they will think that Census will
 15 pass their information on and people can come looking for them.”
 (Spanish interview)
 ○ English-speaker mentioned the “Muslim ban.”

16 **• Respondent Focus Group Findings**

- 17 ○ Legal residency status, fear of deportation, concern about how the
 18 data are used, and which agencies can see it (DHS? ICE?)
 19 ○ Receiving advice not to open the door; [Respondent]s should
 20 request warrant be slipped under the door.
 21 ■ “They say, ‘Never open the door!’”
 22 ■ “This alert has been spread everywhere now.” (Korean
 23 Focus Group)

24 *for the 2020 Census*, presented at National Advisory Committee on Racial, Ethnic, and Other
 25 Populations Fall Meeting (Nov. 2, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf> (“Meyers Report”).

26 ³² See Memorandum from the Center for Survey Measurement on Respondent Confidentiality
 27 Concerns to Associate Directorate for Research and Methodology, U.S. Census Bureau (Sept. 20,
 28 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf> (“Memorandum on the Meyers Report”).

- 1 ○ “In light of the current political situation, the immigrants, especially
2 the Arabs and Mexicans, would be so scared when they see a
3 government interviewer at their doorsteps.” (Arabic Focus Group)
4 ○ “The immigrant is not going to trust the Census employee when
5 they are continuously hearing a contradicting message from the
6 media every day threatening to deport immigrants.” (Arabic Focus
7 Group)

8 ● **Behavior Changes Are Recent**

- 9 ○ “The politics have changed everything. Recently.” (Interviewer)
10 ○ “This may just be a sign of the times, but in the recent several
11 months before anything begins, I’m being asked times over, does it
12 make a difference if I’m not a citizen?” (Interviewer)
13 ○ “Three years ago was so much easier to get respondents compared
14 to now because of the government changes . . . and trust factors
15 Three years ago I didn’t have problems with the immigration
16 questions.” (Interviewer)³³

17 82. These types of concerns are not new to the Bureau. Since at least
18 1980, the Bureau has recognized that, because of immigrants’ fear of how
19 information disclosed on the Census may be used against them, “any effort to
20 ascertain citizenship will inevitably jeopardize the overall accuracy of the
21 population count.” *Fed’n for Am. Immigration Reform*, 486 F. Supp. at 568.

22 83. The Bureau’s own experts believe that adding the citizenship question
23 may threaten the accuracy and confidentiality of enumeration, make the census
24 more expensive to conduct, and jeopardize the Bureau’s nonpartisan reputation.³⁴

25 84. The current Administration’s proposed funding cuts will adversely
26 affect the decennial census and will thus exacerbate the citizenship question’s effect
27 on its accuracy. Former Bureau officials, members of Congress, and Government
28 Accountability Office staff all have expressed concern about a funding shortage for
29 the 2020 Census. The Office of Management and Budget has ordered agencies to

³³ See Meyers Report at 8–9, 13.

³⁴ Wines, *supra*, *Census Bureau’s Own Expert Panel Rebukes Decision to Add Citizenship Question*.

1 submit plans for personnel cuts and other restructuring moves, and the Department
2 of Commerce has not publicly disclosed them or explained how they will affect its
3 plans to hire up to half-a-million temporary workers to conduct the decennial
4 census. The hiring of these workers is particularly important to ensuring an
5 accurate count, as they will be the ones following up with households that do not
6 respond to the initial mailing.

7 **G. Harm to San Jose, Its Residents and BAJI**

8 85. The undercount of Californians in the 2020 Census likely to result
9 from the citizenship question will cause significant harm to cities such as San Jose
10 and their residents. The undercount that will result from the citizenship question
11 will also cause California, and its municipalities, to lose federal funding, including
12 resources from the federal assistance programs that distribute funds on the basis of
13 decennial census-derived statistics.

14 86. Citywide, 12.6% of San Jose's population lives below the poverty line.

15 87. Many residents of San Jose depend upon the receipt of federally
16 funded benefits for their livelihoods. For example, 23.7% of San Jose residents
17 receive Social Security income; 6.6% receive Supplemental Security Income; 2.8%
18 receive cash public assistance income; and 7.6% receive supplemental nutrition
19 assistance benefits.

20 88. This undercount will also harm BAJI, which advocates for minority
21 and immigrant communities, due to the drain on its resources caused by the need to
22 educate its constituents regarding the citizenship questions and other programming
23 to minimize its effects. Further, the diminished federal funding and political
24 representation of minority and immigrant communities as a result of the citizenship
25 questions directly frustrates BAJI's goal of fostering racial, economic, and social
26 equality for Black immigrants and other historically underrepresented communities.

27 89. Unless enjoined now, the Bureau will proceed with finalizing the 2020
28 Census paper questionnaires, which are scheduled to be printed in May of 2019.

1 Only through an injunction can San Jose’s right to have its residents fully and
2 accurately counted be preserved. An injunction is further necessary to protect the
3 interests of BAJI.

4 **FIRST CAUSE OF ACTION**

5 **(Violation of Constitution’s “Actual Enumeration” Mandate;**
6 **U.S. Const., art. I, § 2, cl. 3)**

7 90. Plaintiffs reallege and incorporate herein by reference each and every
8 allegation set forth in paragraphs 1 through 89 above as though set forth herein.

9 91. The Constitution requires the “actual Enumeration” of all people in
10 each state every ten years for the sole purpose of apportioning representatives
11 among the states. U.S. Const., art. I, § 2, cl. 3, and amend. XIV, § 2. The clause
12 does not distinguish between citizens and non-citizens, nor does it distinguish
13 between the legal statuses of non-citizens.

14 92. By including the citizenship question on the 2020 Census, Defendants
15 are in violation of the “actual Enumeration” clause of the Constitution. Because the
16 question will diminish the response rates of non-citizens and their citizen relatives,
17 San Jose, which has a large immigrant population, and BAJI, which advocates for
18 Black immigrant communities, will be disproportionately affected by the census
19 undercount. Inclusion of the question thus directly interferes with Defendants’
20 fulfillment of their constitutional responsibility, as delegated by Congress, to
21 conduct an “actual Enumeration” of the U.S. population.

22 93. This violation harms San Jose and its residents. San Jose will be
23 awarded fewer seats in the U.S. House of Representatives than its population
24 dictates. Further, it will receive millions of dollars less in federal funding for public
25 health, education, transportation and neighborhood improvements on an annual
26 basis.

27 94. This violation harms BAJI due to the diversion of its resources to
28 educate its constituents regarding the census citizenship questions and other

1 programming to minimize its effects and the frustration of its mission to advance
2 racial, economic, and social equality

3 95. Defendants' violation has caused and will continue to cause ongoing,
4 irreparable harm to San Jose, its residents, and BAJI.

5 96. An actual controversy exists between Plaintiffs and Defendants
6 regarding whether Defendants' inclusion of a citizenship question on the 2020
7 Census violates the "actual Enumeration" clause of the U.S. Constitution.

8 **SECOND CAUSE OF ACTION**

9 **(Violation of the Constitution's Apportionment Clause;**

10 **U.S. Const. amend. XIV, § 2)**

11 97. Plaintiffs reallege and incorporate herein by reference each and every
12 allegation set forth in paragraphs 1 through 96 above as though set forth herein.

13 98. The Constitution requires that representatives be "apportioned among
14 the several states according to their respective numbers, counting the whole number
15 of persons in each state, excluding Indians not taxed." U.S. Const., amend. XIV,
16 § 2.

17 99. By including the citizenship question on the 2020 Census, Defendants
18 will undercount "the whole number of persons in each state" because non-citizens
19 and their citizen relatives will be discouraged from responding.

20 100. Because the results of the 2020 Census will be inaccurate if the
21 citizenship question is included, apportionment of congressional seats based upon
22 those results will not be based on "the whole number of persons in each state,"
23 violating the apportionment clause of the Fourteenth Amendment.

24 101. This violation will harm San Jose and its residents. San Jose will be
25 awarded fewer seats in the U.S. House of Representatives than its population
26 dictates. Further, it will receive millions of dollars less in federal funding for public
27 health, education, transportation and neighborhood improvements on an annual
28 basis.

1 102. This violation harms BAJI and the minority and immigrant
2 communities that it serves. These underserved communities will be deprived of
3 federally funded resources and benefits, and the municipalities in which they reside
4 will lose congressional seats, resulting in their political dilution.

5 103. Defendants' violation has caused and will continue to cause ongoing,
6 irreparable harm to San Jose, its residents, and BAJI.

7 104. An actual controversy exists between Plaintiffs and Defendants
8 regarding whether Defendants' inclusion of a citizenship question on the 2020
9 Census violates the Apportionment Clause of the U.S. Constitution.

10 **THIRD CAUSE OF ACTION**

11 **(Violation of APA's Requirement that Administrative Action Be in**
12 **Accordance with Law, Not Contrary to Constitutional Right, and Not**
13 **Beyond Statutory Authority; 50 U.S.C. § 706(2))**

14 105. Plaintiffs reallege and incorporate herein by reference each and every
15 allegation set forth in paragraphs 1 through 104 above as though set forth herein.

16 106. A court must "hold unlawful and set aside" any agency action that is
17 "not in accordance with law," "contrary to constitutional right," or that is "in excess
18 of statutory jurisdiction, authority, or limitations, or short of statutory right." 5
19 U.S.C. § 706(2).

20 107. Adding the citizenship question to the 2020 Census would be contrary
21 to the constitutional requirement that the Census conduct "actual Enumeration" of
22 all people in each state every ten years for the sole purpose of apportioning
23 representatives among the states. U.S. Const., art. I, § 2, cl. 3.

24 108. Adding the citizenship question to the 2020 Census would also be
25 contrary to the constitutional requirement that congressional seats be "apportioned
26 among the several states according to their respective numbers, counting the whole
27 number of persons in each state, excluding Indians not taxed." U.S. Const., amend.
28 XIV, § 2.

1 question thus directly interferes with Defendants’ fulfillment of their constitutional
2 responsibility, as delegated by Congress, to conduct an “actual Enumeration” of the
3 U.S. population, as well as Secretary Ross’s statutory duty to “take a decennial
4 census of population” under 13 U.S.C. § 141(a). A citizenship question, moreover,
5 would not serve the purpose articulated by the U.S. Department of Commerce,
6 because an undercount of non-citizens and their citizen relatives will decrease the
7 accuracy of census data available to prove voter dilution under Section 2 of the
8 Voting Rights Act. Further, Defendants failed to follow their own internal agency
9 policies and guidelines, including under the Information Quality Act, in reaching
10 their decision to add the citizenship question. And finally, Defendants made the
11 decision to include the citizenship question very late in the census planning process
12 and months after the statutory deadline for reporting proposed subjects had passed.
13 This last-minute decision was done hurriedly, at the apparent request of the
14 Department of Justice, on a pre-textual basis, and without the benefit of careful
15 analysis and testing the Bureau usually engages in during the years leading up to
16 the census. This not only constitutes a failure to abide by a statutory mandate, but
17 also reflects the hasty and ill-advised nature of the decision to include the
18 citizenship question on the 2020 Census.

19 115. Defendants’ decision to add a citizenship question to the 2020 Census
20 thus violates the APA’s prohibition against “arbitrary and capricious” agency
21 action. The stated purpose of adding the question—that it is necessary to enforcing
22 Section 2 of the Voting Rights Act—is not borne out by the facts and is a pretext
23 for other unstated and ulterior purposes.

24 116. Defendants’ violation has caused and will continue to cause ongoing,
25 irreparable harm to San Jose, its residents, and BAJI.

26 117. An actual controversy exists between Plaintiffs and Defendants
27 regarding whether Defendants’ inclusion of a citizenship question on the 2020
28 Census violates Section 706(2)(A) of the APA.

PRAYER FOR RELIEF

1
2 WHEREFORE, the City of San Jose and BAJI, by and through their
3 attorneys, respectfully requests that this Court:

4 1. Issue a declaratory judgment, under 28 U.S.C. §§ 2201 and 2202, that
5 including the citizenship question on the 2020 Census violates Article I, Section 2,
6 Clause 3 of the United States Constitution and the APA;

7 2. Issue a preliminary injunction prohibiting all Defendants and all those
8 acting in concert with them from including a citizenship question on the 2020
9 Census and from taking any irreversible steps to include a citizenship question on
10 the 2020 Census;

11 3. Issue a permanent injunction prohibiting all Defendants and all those
12 acting in concert with them from including the citizenship question on the 2020
13 Census;

14 4. Award Plaintiffs costs, expenses, and reasonable attorney fees; and
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. Award such other relief as the Court deems just and proper.

Respectfully submitted,

Dated: April 17, 2018

MANATT, PHELPS & PHILLIPS, LLP

By: s/ John F. Libby

John F. Libby
John W. McGuinness
Emil Petrossian
11355 West Olympic Boulevard
Los Angeles, California 90064
Telephone: (310) 312-4000
Facsimile: (310) 312-4224

**LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW**

Kristen Clarke
Jon M. Greenbaum
Ezra D. Rosenberg
Dorian L. Spence
1401 New York Avenue NW, Suite 400
Washington, DC 20005
Telephone: (202) 662-8600
Facsimile: (202) 783-0857

PUBLIC COUNSEL

Mark Rosenbaum
610 South Ardmore Avenue
Los Angeles, California 90005
Telephone: (213) 385-2977
Facsimile: (213) 385-9089

CITY OF SAN JOSE

Richard Doyle, City Attorney
Nora Frimann, Assistant City Attorney
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San José, California 95113-1905
Telephone Number: (408) 535-1900
Facsimile Number: (408) 998-3131
E-Mail: cao.main@sanjoseca.gov

Attorneys for Plaintiffs
**CITY OF SAN JOSE and BLACK ALLIANCE
FOR JUST IMMIGRATION**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILER’S ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), regarding signatures, Ana G. Guardado hereby attests that concurrence in the filing of this document has been obtained from all the signatories above.

Dated: April 17, 2018

s/ Ana G. Guardado
Ana G. Guardado