

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

LA UNIÓN DEL PUEBLO ENTERO, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States,  
*et al.*,

Defendants.

No. 8:19-cv-02710-PX-PAH-ELH

DECLARATION OF ALBERT E. FONTENOT, JR.

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

1. I am the Associate Director for Decennial Census Programs at the U.S. Census Bureau, and this is my second declaration in this case.

2. This Court has ordered the Defendants to explain:

- The effect of the September 24 entrance of a preliminary injunction in another pending case in the Northern District of California on this case;
- The effect of the new October 5 deadline for completing the self-response and field-data collection phase on the Bureau's ability to follow the "Replan" and to produce an accurate final enumeration by December 31; and
- If the Bureau still intends to meet the December 31 statutory deadline, how it plans to accomplish an accurate final enumeration given that the post-data processing phase has been shortened further.

3. On September 28, 2020, the Secretary of Commerce announced a target date of October 5, 2020 to conclude 2020 Census self-response and field data collection operations. Before the Secretary's announcement of this October 5 target date, my staff re-examined the schedule for post-data collection processing with the goal of identifying processing efficiencies that would provide us the ability to complete the census prior to the December 31, 2020 statutory deadline.

4. We were successful in gaining an extra five days for post–data collection processing, accounting for the gap between the Replan schedule (which was to conclude field operations on September 30, 2020) and the revised schedule (which targets a conclusion of field operations on October 5, 2020). To do this, we postponed the five days of processing needed to implement the Presidential Memorandum entitled Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, 85 Fed. Reg. 44,679 (July 23, 2020). Under the Replan, those five days of processing were to be done before December 31, 2020; under the revised schedule, those five days have been moved to the first week of January 2021, with the goal of producing that data by January 11, 2021.

5. Because we were planning to simply move five processing days, we were planning to close field operations on October 5, 2020—five days later than the Replan schedule—and submit complete apportionment counts by the statutory deadline, December 31, 2020.

6. On September 24, 2020, the U.S. District Court for the Northern District of California issued a Preliminary Injunction (PI) staying the Census Bureau’s August 3, 2020 Replan’s September 30, 2020 deadline for the completion of data collection and December 31, 2020 deadline for reporting the tabulation of the total population to the President, and further enjoining implementation of these two deadlines. Order Granting Plaintiffs’ Motion for Stay and Preliminary Injunction, *Nat’l Urban League, et al. v. Ross, et al.*, Case No. 5:20-cv-05799 (N.D. Cal.), ECF 208. On October 1, 2020, that Court issued a

clarification, ordering that the Census Bureau continue field operations through October 31, 2020.

7. In order to come into compliance with the court orders, the Census Bureau is issuing a text to all Field enumerators, as well as a Broadcast email to all Headquarters and Regional Office staff, stating that “as a result of court orders, the October 5, 2020 target date is not operative, and data collection operations will continue through October 31, 2020.” The message further instructs that “employees should continue to work diligently and enumerate as many people as possible,” and to contact their supervisors with any questions. It also includes links to the court orders from September 24 and October 1. The Census Bureau also is changing all internal and public facing messages to reflect the October 31, 2020 deadline for data collection, and stopped any internal process put in place to support the October 5, 2020 end of operations and to meet the December 31, 2020 statutory deadline for producing the Apportionment Counts.

8. If the California injunction remains in place, it is unlikely that the Census Bureau will be able to meet the December 31 statutory deadline. If, on the other hand, the California injunction is stayed by the Ninth Circuit or the Supreme Court and the Census Bureau is able to complete field operations by October 5, then the Census Bureau anticipates a complete and accurate census by the statutory deadline. In the latter scenario, the Census Bureau anticipates that it would provide the Secretary information regarding unlawful aliens in ICE Detention Centers whom the President could exclude

from the apportionment base, thereby partially implementing his Memorandum. In addition, the Census Bureau currently plans to provide the Secretary with other Presidential Memorandum–related outputs by January 11, 2021, and would continue to work on a timetable to implement that aspect of the Memorandum sooner if feasible.

9. As of October 1, 2020, over 99 million households, 66.6 percent of all households in the Nation, have self-responded to the 2020 Census. Combining the households that self-responded with those that field staff have enumerated under NRFU reveals that as of October 1, 2020 the Census Bureau has enumerated 99.1% percent of the nation’s housing units. The remaining households that are still unresolved at the close of field operations will not go uncounted. The Census Bureau uses a well-accepted statistical methodology called “count imputation” to fill in missing data for unresolved (occupied) addresses.

10. At the time we began to work on the Replan schedule we set a goal of enumerating 99% of the nation’s households in every state using self-response and the NRFU operation. Using our latest projections we believe that between 44 and 49 States will reach a 99% enumeration rate by October 5, 2020. This is comparable to the enumeration rate for prior censuses. The 2010 Census had an enumeration rate of 99.6% while the 2000 Census had an enumeration rate of 99.45%. And in the 2000 Census, 45 States reached a 99% enumeration rate, comparable to our projections for the 2020 Census.

11. The 2020 Census has been the most challenging census in modern history. The Census Bureau has faced an unprecedented pandemic and natural disasters including major fires in the Western United States and hurricanes and flooding in the Gulf Coast. And yet the Bureau is on track to reach a 99% enumeration rate for nearly 150 million households across 3.8 million square miles. This is above the completion rate required for a complete and accurate enumeration by any standard. And it meets the Census Bureau's own demanding standards for a complete and accurate enumeration.

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

DATED and SIGNED:

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