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11 *Attorneys for Defendants*

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

17 NATIONAL URBAN LEAGUE, *et al.*,

18 Plaintiff,

19 v.

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

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

**DEFENDANTS' NOTICE REGARDING
 COMPLIANCE WITH TEMPORARY
 RESTRAINING ORDER**

1 Defendants file this notice to inform the Court of their compliance efforts in response to
2 the Court's September 5, 2020 Temporary Restraining Order ("TRO"). Immediately upon
3 receiving the TRO around 10 p.m. Eastern time on September 5, Defendants began taking steps to
4 determine what concrete efforts would be required for Defendants to come into compliance with
5 the TRO. Within two hours, Defendants transmitted a message to all Regional Directors, Deputy
6 Regional Directors, Assistant Regional Census Managers, Area Managers, and Area Census Office
7 Managers attaching a copy of the Order and stating that "Census Bureau and the Commerce
8 Department are obligated to comply with the Court's Order and are taking immediate steps to do
9 so." *See* Attach. A. The Census Bureau simultaneously posted a copy of the message on its public
10 website, under the heading "Guidance for Census Bureau Field Employees." *See* Census Bureau,
11 *Important Information Related to Census Bureau's Compliance with Today's Federal Court*
12 *Order*, <https://www.census.gov/newsroom/press-releases/2020/federal-court-order.html>. The
13 notice indicated that detailed guidance about compliance would be distributed shortly, and that
14 enumeration would continue. *Id.*

15 The night of Sunday, September 6, Defendants transmitted a detailed list of instructions to
16 Regional Directors regarding what steps the field offices must take and what they must refrain
17 from doing to comply with the TRO. *See* Attach. B, C. These instructions reflect Defendant's
18 alterations of census operations in order to comply with the requirement to stop "implementing the
19 August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened
20 timelines in the August 3, 2020 Replan," as the Court's TRO directs. *See* Attach. C. Mr.
21 Fontenot's Assistant Director for Field Operation convened a call with those directors in the
22 morning of September 7, 2020, to explain those steps and their implementation, as well as to
23 answer any questions. *See* Attach. B.

24 Defendants understand that, by its terms, the TRO is effective until the Court holds the
25 scheduled preliminary injunction hearing on September 17, 2020. Defendants will fully comply
26 with the TRO in the meantime. If the Court intends to extend the TRO or otherwise believes that
27 the effect of the TRO lasts beyond September 17, Defendants respectfully request that the Court
28 convert the TRO to a preliminary injunction now in order to afford adequate time for any appellate

1 review. As Mr. Fontenot stated in his declaration filed on September 4, 2020, “if the Court were
2 to extend the data collection period past September 30, 2020, the Census Bureau would be unable
3 to meet its statutory deadlines to produce apportionment counts prior to December 31, 2020 and
4 redistricting data prior to April 1, 2021.” Fontenot Decl. ¶ 100, ECF 81-1.

5
6 DATED: September 8, 2020

Respectfully submitted,

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8 JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

9
10 DAVID MORRELL
Deputy Assistant Attorney General

11
12 ALEXANDER K. HAAS
Branch Director

13
14 DIANE KELLEHER
BRAD P. ROSENBERG
Assistant Branch Directors

15
16 /s/ Alexander V. Sverdlov
ALEXANDER V. SVERDLOV
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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2020, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing.

/s/ Alexander V. Sverdlov
ALEXANDER V. SVERDLOV

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Attachment A

Fw: Important Information related to Census Bureau's Compliance with today's Federal Court Order

James T Christy (CENSUS/LA FED) [REDACTED]@census.gov>

Sat 9/5/2020 11:59 PM

To: [REDACTED]@census.gov>

📎 1 attachments (205 KB)

TRO ORDER 9-5-20.pdf;

FYI

James Christy

U.S. Census Bureau

LA [REDACTED] HQ [REDACTED] Cell [REDACTED]

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Shape Your Future | Start Here 2020census.gov

From: James T Christy (CENSUS/LA FED) [REDACTED]@census.gov>

Sent: Saturday, September 5, 2020 11:57 PM

To: James T Christy (CENSUS/LA FED) [REDACTED]@census.gov>

Subject: Important Information related to Census Bureau's Compliance with today's Federal Court Order

Guidance for Census Bureau Field Employees

A federal district court for the Northern District of California issued a temporary restraining order at 9:29 PM EDT on 9/5/2020 in the case of National Urban League v. Ross, No. 20-05799. The Order provides that the Census Bureau and the Commerce Department "are enjoined from implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any Census field operations, until the Court conducts its September 17, 2020 hearing on Plaintiffs' PI motion."

The Census Bureau and the Commerce Department are obligated to comply with the Court's Order and are taking immediate steps to do so.

The Bureau and the Department are also in the process of preparing additional guidance and will distribute that guidance shortly.

Enumeration will continue.

The Order is attached for reference.

Direct any questions to your regional management.

James Christy

U.S. Census Bureau

LA [REDACTED] HQ [REDACTED]

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DISTRIBUTION: All RDs, DRDs, ARCMs, Area Managers & ACOMs

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Attachment B

Fw: Guidance for Field Managers

James T Christy (CENSUS/LA FED) [REDACTED]@census.gov>

Mon 9/7/2020 12:02 AM

To: FLD Regional Directors [REDACTED]@census.gov>

Cc: [REDACTED]@census.gov>

📎 2 attachments (130 KB)

Guidance for Field Managers related to Action Required following the 9-5 Court Order.pdf; Guidance for Field Managers related to Action Required following the 9-5 Court Order.docx;

The attached documents the actions the Census Bureau will take or has taken to implement the September 5 Temporary Restraining Order. It includes adjustments you will need to make in your operations. **Please note that it continues on to a second page.** At this point, please do not share this document with your staff. We will discuss this on a conference call tomorrow. Look for an invite shortly.

James Christy**U.S. Census Bureau**

LA [REDACTED] HQ [REDACTED] Cell [REDACTED]

[census.gov](https://www.census.gov) Connect with us on [Social Media](#)

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From: Albert E Fontenot (CENSUS/ADDC FED) [REDACTED]@census.gov>

Sent: Sunday, September 6, 2020 11:52 PM

To: James T Christy (CENSUS/LA FED) [REDACTED]@census.gov>

Subject: Fwd: Guidance for Field Managers

Jamey

Let me know when you send to the RDs.

Al

Albert E. Fontenot Jr.

Associate Director, Decennial Census Programs

United States Department of Commerce

Bureau of the Census

Office [REDACTED]

Office [REDACTED]

Cell [REDACTED]

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Attachment C

Guidance for Field Managers related to Action Required following the 9/5 Court Order

The following are actions the Census Bureau will take or has taken to implement the September 5 Temporary Restraining Order enjoining the Bureau and the Commerce Department from:

“implementing the August 3, 2020 Replan or allowing to be implemented any actions as a result of the shortened timelines in the August 3, 2020 Replan, including but not limited to winding down or altering any Census field operations, until the Court conducts its September 17, 2020 hearing on Plaintiffs’ PI motion.”

Field Managers will take the following actions to come into compliance with the September 5 Order and to preserve continuity of field operations pending further litigation developments:

- Refrain from releasing data collection staff (enumerators and CFSs) in Area Census Offices where operational progress indicates the area is in Phase 2 or the Closeout phase of the NRFU operation. The Optimizer will continue to assign available work to staff who enter work availability. Continue to release staff for reasons related to performance, quality concerns or conduct, as was appropriate before the Replan.
- The fixed date of September 11, 2020, as the date on which all CFS areas become eligible for the Closeout phase has been removed. We will implement Phase 2 only after we have enumerated 85% of housing units in a CFS area and we will implement the Closeout phase only when we reach 90%, which allows us to collect more quality data than the pre-Replan thresholds. Do not implement Phase 2 or the Closeout phase until these benchmarks have been met.
- The workload assigned for follow-up will reflect the following reversions to pre-Replan status:
 - We are restoring field verification of self-reported vacant housing units.
 - We will resume making six contact attempts to confirm vacant housing units, instead of the one contact attempt set forth in the Replan.
 - We will resume making six contact attempts on vacant/delete cases with conflicting information, instead of the one contact attempt set forth in the Replan.
 - We will resume making six contact attempts on addresses designated for reinterview and SRQA contacts, instead of the one contact attempt set forth in the Replan.
 - We will reintroduce random sample reinterview cases, as had been used to supplement analytical sample reinterview cases before the Replan.

Continue to take the following actions, consistent with pre-Replan procedures:

- Continue to conduct and schedule replacement training in areas that are showing low completion rates.
- Continue to have staff travel from areas that are at higher levels of completion to areas that are underperforming because of insufficient staffing numbers. This includes within and across regional boundaries.
- Continue to use the outbound telephone enumeration option for areas that are difficult to reach for in-person interviews, and as a supplement to in-person interviewing activities.
- Continue using “pop count only” during the final enumeration attempts (which occur in the last part of the Closeout Phase), as we have done in every prior decennial census.
- Continue to close CFS areas when enumeration of all housing units in that area is complete.

Additionally, continue to utilize enumerator and CFS awards programs as designed to maintain the maximum feasible level of staffing and staff footprint throughout the field.