No. ________

In the Supreme Court of the United States

UNIVERSITY OF SOUTH FLORIDA COLLEGE REPUBLICANS, MICHAEL FUSELLA, PINELLAS COUNTY YOUNG REPUBLICANS, PARISA MOUSAVI, GRETCHEN ZOELLER, AND BYRON L. DONALDS,
Appellants,

v.

SECRETARY OF COMMERCE, ACTING DIRECTOR, U.S. CENSUS BUREAU, AND THE UNITED STATES OF AMERICA,
Appellees,

ALLIANCE FOR RETIRED AMERICANS, MANUEL GUERRERO, AND CAMERON DRIGGERS,
Intervenors-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

The Constitution requires an "actual Enumeration" of the population every ten years. Congress has found that an accurate census "is one of the most critical constitutional functions our Federal Government performs," and that using statistical methods risks "an inaccurate, invalid, and unconstitutional census." So it gave any resident whose representation could be changed by such a method—and any Representative—a cause of action, heard by a three-judge district court and appealed to this Court. Pub. L. No. 105-119, § 209, 111 Stat. 2440, 2480–83 (1997).

The risk Congress identified came to pass in 2020. Curtailing its enumeration operations, the Census Bureau replaced counting with whole-person imputation, adding at least 3.4% of the population by statistical inference. It later reported significant miscounts in 14 States; the 2010 census had none. This caused Florida to miss an additional House seat.

Plaintiffs, including Florida voters and a Member of Congress, sued under § 209. The three-judge district court dismissed. The questions presented are:

1. Whether Florida residents and a Member of Congress who allege that the Census Bureau's use of statistical methods cost their State a seat in the House of Representatives have Article III standing to challenge those methods.

2. Whether 28 U.S.C. § 1658(a)'s four-year limitations period displaces 28 U.S.C. § 2401(a)'s six-year period covering "every civil action commenced against the United States" for § 209 claims.

PARTIES AND PROCEEDINGS

Appellants are the University of South Florida College Republicans, Michael Fusella, the Pinellas County Young Republicans, Parisa Mousavi, Gretchen Zoeller, and Byron L. Donalds, in his official capacity as a Member of Congress. Appellants were Plaintiffs before the three-judge district court convened in the U.S. District Court for the Middle District of Florida.

Appellees are Howard W. Lutnick, in his official capacity as Secretary of Commerce, George M. Cook, in his official capacity as Acting Director of the Census Bureau, and the United States of America. Appellees were Defendants before the three-judge district court. While the caption on the opinion does not list the United States, it is a Defendant on the operative complaint. App.78a. Intervenors-Appellees in this action are the Alliance for Retired Americans, Manuel Guerrero, and Cameron Driggers, who were Intervenor-Defendants before the district court.

Corporate Disclosure Statement: Under Supreme Court Rule 29.6, Pinellas County Young Republicans discloses the following: (1) it is a non-governmental corporate party; (2) it has no parent corporation; and (3) there is no publicly held company that owns 10% or more of its stock.

The relevant proceedings are:

Univ. of S. Fla. Coll. Republicans v. Lutnick, No. 8:25-cv-2486 (M.D. Fla. July 7, 2026), Doc. 111, Order Granting Intervenor-Defendants' Motion to Dismiss with Prejudice, and Doc. 112, Endorsed Order Granting Defendants' Motion to Dismiss.

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STATEMENT OF JURISDICTION

Appellants timely filed a notice of appeal on July 10, 2026. App.76a–77a. This Court has jurisdiction under Pub. L. No. 105-119, § 209(e), 111 Stat. 2440, 2482 (1997).

PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are set out at App.125a–136a.

INTRODUCTION

In 2020, the Census Bureau hastily abandoned established procedures, replacing them with "irregularities, novelties, and improvisations." App.64a (Merryday, J., dissenting). The Bureau scaled back assistance, delayed its mailings, postponed field enumeration, and eliminated early non-response follow-up entirely. It even told its enumerators not to knock on doors. Rather than exhaust the available means of reaching households, the Bureau filled the gaps by inference. It added at least 10.9 million people to the count through a statistical method known as "whole-person imputation." That is 3.4% of the population, and nearly double what the Bureau added in 2010 and in 2000.

Poor results followed. The Bureau's own 2022 Post-Enumeration Survey found statistically significant overcounts in eight States and undercounts in six. After the 2010 census, that same survey found no statistically significant miscount in any State. Florida was undercounted by 3.48%—roughly 760,000 people—missing an additional seat in Congress by 171,561 people.

Congress anticipated this problem. Before the 2000 census, it found that using statistical methods "poses the risk of an inaccurate, invalid, and unconstitutional census." § 209(a)(7). So it gave a cause of action to an extraordinarily broad array of persons—including any resident whose representation could be changed, and any Representative or Senator—and sent appeals directly to this Court.

But no court will decide whether the 2020 census delivered the "actual Enumeration" the Constitution commands. The divided district court below held that Plaintiffs lack standing. Contradicting the complaint, it doubted that the Bureau's methods caused Florida's undercount, and it found no remedy available now that elections and redistricting have proceeded under the 2020 results. It held in the alternative that Plaintiffs sued too late, disregarding the six-year period applicable to every claim against the United States and instead starting a four-year clock in April 2021—long before the Bureau had published any estimate that Florida was undercounted.

Together, those holdings leave § 209 with almost nothing to do—and challengers to unlawful census methods with practically no remedy. A plaintiff who waits for proof loses on redressability; one who sues before the proof arrives has no ripe claim. As Judge Merryday put it in dissent, the result is a "perhaps insurmountable barrier, a legal and temporal trap." App.73a.

Each holding is wrong. And the consequences demand review.

First, this Court found standing on materially identical facts in *Utah v. Evans*, 536 U.S. 452 (2002). The plaintiff there challenged the Bureau's use of imputation after the census was complete and sought an order requiring the Secretary to recalculate the numbers and recertify the result. This Court found that chain sufficient—even though a round of redistricting had already passed. The court below rejected it here at the pleading stage, drawing inferences against Plaintiffs and quoting their request for relief only halfway.

Second, Plaintiffs' complaint was timely. 28 U.S.C. § 1658(a)'s four-year period applies "[e]xcept as otherwise provided by law." Another statute provides otherwise: "every civil action commenced against the United States" may be brought within six years. 28 U.S.C. § 2401(a). Plaintiffs sued within six years of any plausible accrual date. The court below inverted the general and the specific to hold otherwise.

These important questions will not go away—but the effect of the decision below and other recent § 209 decisions is to insulate them from meaningful judicial review. The Bureau has said it will use count imputation again in 2030. With each decade the census strays further from an "actual Enumeration," and statistical adjustment opens the door to political tampering. If no plaintiff can reach the merits, that drift is permanent and unreviewable. The decision below does not simply bar these Plaintiffs. It insulates unlawful census methods from review no matter who sues, or under what law.

Representation rests on the census. "If the census and the vote are not right, nothing that follows from them is right." App.68a (Merryday, J., dissenting). Because the decision below would entrench unlawful census methods and thereby distort our self-government, the Court should note probable jurisdiction or summarily reverse.

STATEMENT OF THE CASE

A. Legal framework

"Article I, § 2, cl. 3, of the Constitution provides that Representatives 'shall be apportioned among the several States . . . according to their respective Numbers,' which requires, by virtue of § 2 of the Fourteenth Amendment, 'counting the whole number of persons in each State.'" *Franklin v. Massachusetts*, 505 U.S. 788, 791 (1992). This census "is to be calculated by 'actual Enumeration'" every ten years. *Id.* (quoting U.S. Const. art. I, § 2, cl. 3).

By statute, the Secretary of Commerce takes the census "in such form and content as he may determine, including the use of sampling procedures and special surveys." 13 U.S.C. § 141(a). "The tabulation of total population by States . . . as required for the apportionment of Representatives in Congress . . . shall be completed within 9 months after the census date and reported by the Secretary to the President." *Id.* § 141(b). After receiving the Secretary's report, the President "shall transmit to the Congress a statement showing the whole number of persons in each State" according to the census, "and the number of Representatives to which each State would be entitled." 2 U.S.C. § 2a(a). "Each State shall be entitled . . . to the number of Representatives shown" in the President's statement, and the Clerk of the House of Representatives must "send to the executive of each State a certificate of the number of Representatives to which such State is entitled"—known as the "entitlement certificate." *Id.* § 2a(b); App.19a n.7.

In the 1998 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Pub. L. No. 105-119, § 209, 111 Stat. 2440, 2480 (1997), Congress provided a cause of action for certain census challenges. Congress found that the Constitution "clearly requires an 'actual Enumeration,'" and that an "accurate" census "is one of the most critical constitutional functions our Federal Government performs." § 209(a)(4)–(6). According to Congress, "the use of statistical sampling or statistical adjustment in conjunction with an actual enumeration to carry out the census with respect to any segment of the population poses the risk of an inaccurate, invalid, and unconstitutional census." § 209(a)(7).

Thus, Congress provided that "[a]ny person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law (other than this Act), in connection with the 2000 or any later decennial census . . . may in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method." § 209(b). Statistical methods include any "statistical procedure" "to add or subtract counts to or from the enumeration of the population as a result of statistical inference." § 209(h)(1). And an "aggrieved person" is "any resident of a State whose congressional representation or district could be changed as a result of the use of a statistical method challenged," as well as "any Representative or Senator." § 209(d). Such actions "shall be heard" by a three-judge district court, and appeals are directly to this Court. § 209(e)(1). The action must be expedited by the courts "to the greatest possible extent." § 209(e)(2).

B. Facts

The 2020 census represented a stark departure from normal census operations. Because of the COVID-19 pandemic, Defendants fundamentally altered their approach to data collection and processing. Assistance was scaled back; mailing materials were delayed; field enumeration operations were postponed; early non-response follow-up was eliminated entirely; door-to-door procedures were revised to prohibit knocking; and field training was overhauled to minimize in-person contact while logistical resources shifted to procuring masks and sanitizer rather than counting people. App.88a–91a.

Rather than exhaust available means of reaching households, the Census Bureau turned to statistical imputation—a technique that fills in missing data by inference rather than direct contact—on an unprecedented scale. Defendants dramatically increased their reliance on whole-person imputation, a form of "count imputation" that "uses administrative records or other 'imputation methods' based on people in a similar nearby household" to add to the census count. App.95a. In the 2020 census, Defendants used whole-person imputation to add (at least) 10.9 million people, 3.4% of the population—nearly double the numbers added in 2010 and 2000. App.95a.

But the heightened use of statistical inferences could not make up for the census's failures, and "more imputation" "led to inaccurate results." App.98a. The Bureau's own Post-Enumeration Survey, released in 2022, revealed that the 2020 census produced statistically significant overcounts in eight States and undercounts in six—a severe deterioration from the 2010 census, which reported no statistically significant undercount or overcount in any State. App.97a–98a.

The Bureau reported that Florida was undercounted by 3.48%, or about 760,000 people. App.108a. This undercount had consequences for apportionment, as Florida missed an additional congressional seat by just 171,561 people. App.102a. "Had the Bureau done an actual enumeration," "the allocation of House seats would have changed." App.103a. And the consequences extend beyond representation. More than 350 federal programs allocate funding based on census data, so Florida also suffered a loss of funding from the undercount. App.109a.

C. Proceedings below

Plaintiffs include the University of South Florida College Republicans and its then-President (a Florida resident), Pinellas County Young Republicans and its President (a Florida resident), a Florida resident, and Representative Byron Donalds—a Member of Congress who represents Florida's 19th congressional district. Defendants include the Commerce Secretary and the Bureau's Director, as well as certain third-party groups and individuals that intervened. App.2a–4a.

Plaintiffs sued on September 15, 2025, later amending their complaint. App.9a–11a. This appeal focuses on Plaintiffs' § 209 claims, which allege that Defendants' use of statistical methods in the 2020 census violated the Constitution's "actual

Enumeration" clause and 13 U.S.C. § 141(a). App.114a–117a.

Plaintiffs identified vote dilution, federal funding, and informational injuries from these unlawful methods. App.108a–114a. Plaintiffs alleged that "[b]ut for Defendants' vast use of statistical methods on 2020 census data, Florida would have gained an additional House seat." App.108a. And "[t]he loss of a House seat necessarily means that Florida Plaintiffs vote in larger congressional districts, thereby having their votes diluted." *Id.* For relief, Plaintiffs sought, *inter alia*, "mandatory relief" "[o]bligating Defendants to prepare and send to the President corrected or supplemental apportionment data and tabulation that excludes population data that was substituted with results derived primarily from statistical methods and is otherwise a constitutionally compliant actual enumeration." App.122a.

On a divided vote, the district court dismissed. The majority held that Plaintiffs lack Article III standing because Plaintiffs "fail[ed] to establish" causation and redressability. App.16a–30a. Relying on other Bureau statements, the court doubted the complaint's allegation "that unlawful statistical methods caused Florida's alleged undercount." App.16a. The court also said that Plaintiffs' claims were not redressable because of "substantial changes in Representatives following two federal elections and ongoing nationwide redistricting" since the 2020 census. App.21a. And the court held that the procedural-injury standing doctrine did not apply because "there are no allegations that Defendants violated any procedural rights, rules, or regulations." App.31a.

Alternatively, the majority held that Plaintiffs' claims were time-barred. App.49a–54a. The court applied 28 U.S.C. § 1658(a), which says that "[e]xcept as otherwise provided by law, a civil action arising under an Act of Congress enacted after [1990] may not be commenced later than 4 years after the cause of action accrues." The court refused to apply the six-year limitations period applicable to "every civil action commenced against the United States," 28 U.S.C. § 2401(a), reasoning that § 1658(a) "is the more specific statute." App.50a.

Judge Merryday dissented. He emphasized that the majority "uncritically accept[ed] an array of the Bureau's self-vindicating notions" that departed from the complaint's allegations. App.67a. He said that the majority "summarily disregard[ed] Congress's determination that certain persons have standing to assert the constitutionally important claims created in" § 209. App.68a. Further, he saw no reason to "assume that any branch of government will ignore a mandate . . . finding the census incorrectly determined" and "citizens unlawfully represented." App.69a. And he explained that § 2401(a) provides "the more specific statute [of limitations], specifically governing an action against the United States." App.70a.

He concluded that the majority's view "leave[s] a prospective litigant an excruciatingly brief time, perhaps a matter of weeks, if any time at all," to bring a claim challenging census methods—making § 209 "perhaps the most strictly construed remedial statute in the history of remedial statutes." App.72a–73a. "[T]he accuracy and integrity of the census, intimately akin to the accuracy and integrity of both the vote and the vote count in an election, is the foundation of legitimate government; we ignore this at our imminent peril." App.68a.

REASONS FOR NOTING PROBABLE JURISDICTION OR SUMMARILY REVERSING

I. Plaintiffs have standing.

Plaintiffs' standing follows directly from this Court's decision in *Evans*, which found standing in the context of a near-identical postcensus claim—adjudicating it even though a round of redistricting was already over. 536 U.S. at 460–61. The plaintiff there challenged the Bureau's use of imputation after the census was complete, sought an order requiring recalculation and recertification, and asked the Court to assume that the political branches would act on the judgment. This Court found each link sufficient. The district court rejected the same three links here, and it did so at the pleading stage by resolving contested statistical questions against Plaintiffs. The district court's dismissal conflicts with *Evans* and this Court's standing precedents.

A. The standing analysis below contradicts this Court's decision in *Utah v. Evans*.

Plaintiffs' standing is established by *Evans*, which involved a challenge to the use of imputation in the census. The Court held that the plaintiff had standing, adopting the analysis of four Justices in *Franklin*. 536 U.S. at 460. In *Franklin*, this Court had rejected on the merits a similar claim against the census. *Id.* at 459. "A private plaintiff had sued the Secretary of Commerce, challenging the legality of a

1990 census counting method as 'arbitrary and capricious' and contrary to certain . . . statutes." *Id.* "That plaintiff sought to require the Secretary to recalculate the numbers and recertify the official results," in the hope "that would ultimately lead to a reapportionment that would assign an additional Representative to his own State." *Id.* at 460.

The majority in *Evans* noted the view of four Justices in *Franklin* "that the controversy between the plaintiff and the Secretary was concrete." *Id.* "[A]s a practical matter, redress seemed likely," as the Court "'assume[d] it is substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision.'" *Id.* (quoting *Franklin*, 505 U.S. at 803 (opinion of O'Connor, J.)). And "no further potential obstacle to standing" was identified. *Id.*

In *Evans*, the Court adopted these views. It found standing in *Evans* as in *Franklin*, reasoning that:

> Both [plaintiffs] brought their lawsuits after the census was complete. Both claimed that the Census Bureau followed legally improper counting methods. Both sought an injunction ordering the Secretary of Commerce to recalculate the numbers and recertify the official result. Both reasonably believed that the Secretary's recertification, as a practical matter, would likely lead to a new, more favorable, apportionment of Representatives.

Id. at 460–61. The Court held that this chain established the plaintiff's standing, and to hold otherwise would require it to "reconsider" its precedents—which it declined to do. *Id.* at 461. The Court "consequently conclude[d] that [the plaintiff] has standing." *Id.* at 464.

The Court emphasized that Congress would not "have wished to deprive of its day in court a [plaintiff] that did not learn about a counting method's representational consequences until after the census is complete—and hence had little, if any, incentive to bring a precensus action." *Id.* at 463. So the fact that the case was being decided two years after the census did not affect the Court's jurisdiction. It made no difference that redistricting had already been done in Utah and its primary filing deadline had passed before the case was argued.[1] The Court found redressability and standing—even though relief would have entailed reapportionment and redistricting within Utah had it gained the extra seat it sought. Relief could have corrected future elections, so Article III's requirements were satisfied for a "postcensus lawsuit[]." *Evans*, 536 U.S. at 463.

Evans is on all fours with this case. This case was brought "after the census was complete," claiming "legally improper counting methods." *Id.* at 460. It also seeks an injunction requiring recalculation and recertification by the Bureau. App.122a. And there is a reasonable likelihood that a new count would, as a

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[1] *See* Utah State Legislature, *2001 Redistricting in Utah* (Jan. 2002), https://perma.cc/K8TS-MAEG; FEC, *2002 U.S. Congressional Primary Election Dates and Candidate Filing Deadlines for Ballot Access* (July 30, 2002), https://perma.cc/K2QG-5HGZ.

practical matter, lead to a more favorable apportionment of Representatives to Florida. *See* App.108a.

B. Plaintiffs' standing also follows from this Court's other precedents.

The Court's other precedents confirm Plaintiffs' standing. Generally, "standing contains three elements that a plaintiff must plead": an "injury in fact," "a causal connection between the injury and the conduct complained of," and that it is "likely" "that the injury will be redressed by a favorable decision." *Dep't of Educ. v. Brown*, 600 U.S. 551, 561 (2023) (citation modified). But "when a statute affords a litigant a procedural right to protect his concrete interests, the litigant may establish Article III jurisdiction without meeting the usual standards for redressability and immediacy." *Id.* (citation modified). "[I]n procedural-standing cases, [courts] tolerate uncertainty over whether observing certain procedures would have led to (caused) a different substantive outcome." *Id.* at 565; *see also Massachusetts v. EPA*, 549 U.S. 497, 518 (2007) (explaining that a procedural-injury plaintiff "has standing if there is some possibility that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed" the plaintiff).

1. Plaintiffs allege a procedural injury.

Plaintiffs allege the violation of a procedural right—the procedures governing the census. App.115a–116a. Section 209(b) provides for suits by "[a]ny person aggrieved by the use of any statistical method," to obtain relief "against the use of such method." The statute also defines "statistical method" as, *inter alia*, any "statistical *procedure*" "to add or subtract counts to or from the enumeration of the population as a result of statistical inference." § 209(h)(1) (emphasis added).

The challenged procedures diluted Plaintiffs' votes. So Plaintiffs have standing to challenge those improper procedures, even if the same outcome could follow "after abiding by the contested procedural requirement." *Brown*, 600 U.S. at 562.

The district court refused to apply the procedural-injury standing doctrine, on the ground that "there are no allegations that Defendants violated any procedural rights, rules, or regulations." App.31a. But the whole point of the complaint is to challenge the methods—the *procedures*—used in enumeration. *E.g.*, App.88a–100a. The district court elsewhere recognized that Plaintiffs "challenge the 'statistical methods' used during the 2020 U.S. Census, which allegedly 'resulted in inaccurate population counts in certain States, particularly Florida.'" App.4a. And even as the district court insisted that Plaintiffs' requested relief did not "requir[e] process," it agreed that Plaintiffs sought to require Defendants to engage in a different process—actual enumeration—"to recalculate the final nationwide count." App.35a.

In any event, this Court's decision in *Evans* establishes beyond doubt that this is a procedural-injury case. There, the Court put its analysis "in terms of our 'standing' precedent" by noting "similar circumstances" in which the Court had conferred standing where a "practical consequence of" a change in procedures would be "a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered." 536 U.S. at 464. The first decision cited by *Evans* on this point was *Federal Election Comm'n v. Akins*, 524 U.S. 11 (1998), which this Court has identified as an application of the doctrine that "the violation of a procedural right" "can be sufficient in some circumstances to constitute injury in fact." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 342 (2016).

Given that *Evans* applied a procedural-injury standing analysis to a functionally identical claim—and that § 209 confirms that statistical methods are matters of procedure—the district court flouted this Court's precedents by disregarding a procedural-injury analysis.

2. Plaintiffs allege each standing element.

Under the relevant procedural-injury standing analysis—or even an ordinary standing analysis—Plaintiffs have adequately alleged standing, just as the plaintiff in *Evans* did.

First, Plaintiffs have alleged an injury-in-fact of vote dilution. The district court did not dispute that injury-in-fact was adequately alleged, nor could it have. Under this Court's precedents, the "expected loss of a Representative to the United States Congress undoubtedly satisfies the injury-in-fact requirement of Article III standing." *Dep't of Com. v. U.S. House of Representatives*, 525 U.S. 316, 331 (1999). Plaintiffs squarely allege that Florida lost at least one Representative in Congress. App.108a. "With one fewer Representative, [Florida] residents' votes will be diluted," so "the threat of vote dilution" "is concrete and actual or imminent, not conjectural or hypothetical." *Dep't of Com.*, 525 U.S. at 332 (citation modified); *see* App.108a.

Plaintiffs also allege causation and redressability, especially under the lower standards that apply in the procedural-injury context. *See Brown*, 600 U.S. at 561. In this context, "[a]ll that is necessary is to show that the procedural step was connected to the substantive result." *Massachusetts*, 549 U.S. at 518 (quoting *Sugar Cane Growers Coop. of Fla. v. Veneman*, 289 F.3d 89, 94–95 (D.C. Cir. 2002)).

Here, Plaintiffs allege that "[b]ut for Defendants' vast use of statistical methods on 2020 census data, Florida would have gained an additional House seat and an additional vote in the Electoral College." App.108a. They allege many facts supporting this conclusion that if "the Bureau [had] done an actual enumeration" rather than imputation, Florida would have gained a seat. App.103a; *see, e.g.*, App.102a–104a.

Redressability follows. Plaintiffs ask for an accurate count "by means of direct contact." App.117a. Specifically, they request "mandatory relief" "[o]bligating Defendants to prepare and send to the President corrected or supplemental apportionment data and tabulation that excludes population data that was substituted with results derived primarily from statistical methods and is otherwise a constitutionally compliant actual enumeration." App.122a.

Based on the complaint's allegations, this "actual enumeration" is likely to redress Plaintiffs' vote dilution by leading to Florida gaining a seat. Of course, because this is a procedural-injury case, Plaintiffs would have standing even if redressability (or causation) were *not* "likely": "In this context, the fact that the [government] might well come to the same decision after abiding by the contested procedural requirement does not deprive a plaintiff of standing." *Brown*, 600 U.S. at 561–62.

Once again, this Court's precedent supports Plaintiffs' allegations of causation and redressability. This Court has already held that "[t]here is undoubtedly a 'traceable' connection between the use of [statistical methods] in the decennial census and [a State's] expected loss of a Representative." *Dep't of Com.*, 525 U.S. at 332. And the Court has held that "there is a substantial likelihood that the requested relief—a permanent injunction against the proposed uses of [those methods] in the census—will redress the alleged injury." *Id.*

That is true even though, by statute, the President already transmitted to Congress the certificate specifying how many Representatives each State would be entitled to based on the 2020 census. *See* 2 U.S.C. § 2a; *Evans*, 536 U.S. at 461. This Court "read the statute as permitting 'certificate' revision in . . . cases of court-determined legal error leading to a court-required revision of the underlying Secretarial 'report.'" *Evans*, 536 U.S. at 462. Such a corrected report is exactly what Plaintiffs request here. App.122a. And *Evans* held that "it is substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision." 536 U.S. at 460. Courts also "assume that if the President transmits revised reapportionment calculations to Congress, the Clerk of the House of Representatives would submit a new certificate to the states pursuant to 2 U.S.C. § 2a(b)." *Utah v. Evans*, 182 F. Supp. 2d 1165, 1172 (D. Utah 2001) (citing, *inter alia*, *Franklin*, 505 U.S. at 824 (Scalia, J., concurring in part and concurring in judgment) (agreeing that "in light of the Clerk's purely ministerial role, we can properly assume that insofar as his participation is concerned the sequence of events will occur")).

Thus, the statutory apportionment scheme "poses no legal bar to 'redress.'" *Evans*, 536 U.S. at 462. That conclusion is especially strong here, given Plaintiffs' allegation that the President has publicly doubted the accuracy of the prior census. App.107a. The President "would presumably not bother with such efforts" to increase census accuracy if he had no concerns about the 2020 census and its ramifications for representation. *Massachusetts*, 549 U.S. at 526.

Reinforcing Plaintiffs' standing and federal jurisdiction is *Wisconsin v. City of New York*, 517 U.S. 1 (1996). There, six years after the 1990 census, the Court decided whether the Bureau had properly declined to make statistical adjustments. *Id.* at 4. That exercise of jurisdiction contradicts the standing analysis below.

Last, Plaintiffs' standing is confirmed by § 209 itself, which "instantiates a remarkable, explicit, and privately enforceable congressional determination." App.63a (Merryday, J., dissenting). The fact "that the procedural right has been accorded by Congress . . . can loosen the strictures of the redressability prong." *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009). After all, "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy" under Article III. *Spokeo*, 578 U.S. at 341 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 580 (1992) (Kennedy, J., concurring in part and concurring in judgment)); *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021) ("Courts must afford due respect to Congress's decision . . . to grant a plaintiff a cause of action to sue over the defendant's violation of [a legal] prohibition or obligation.").

Here, Congress gave a cause of action to any resident whose congressional representation "*could be changed* as a result of the use of a statistical method," along with "any Representative." § 209(d) (emphasis added). Congress thus established the causal connection for anyone whose representation "could be changed." Congress also found that statistical methods "pose[] the risk of an inaccurate, invalid, and unconstitutional census," § 209(a)(7), establishing the connection between the census procedures and a concrete interest in vote dilution. As confirmed by this statute, Plaintiffs—voters and a Representative—have standing to challenge the unlawful procedures used in the census.

3. The district court reached the opposite result by drawing mistaken inferences against Plaintiffs.

In departing from this Court's precedents by concluding that Plaintiffs lacked standing, the district court avoided the complaint's allegations and drew faulty inferences against Plaintiffs.

Causation. On causation, the district court repeatedly noted "that Florida's whole-person imputation rate was 3.6%, while the nationwide rate was 3.4%," so "excluding whole-person imputation data would thus seem to *increase* any undercount of Florida relative to the rest of the country." App.17a, 23a n.10, 29a. But that misses the point. The unlawful action targeted by Plaintiffs is the use of imputation *instead of an actual enumeration*. *See* App.115a. That is why Plaintiffs seek corrected data that "excludes" imputations *and* "is otherwise a constitutionally compliant actual enumeration." App.122a. In quoting Plaintiffs' request, the district court simply omitted the second part of this request. App.23a n.10.

In other words, Plaintiffs do not ask the Census Bureau to subtract people from Florida's count; they ask it to count the people it failed to count. As the complaint explains in detail, had the Bureau counted the Floridians it admits it missed, "Florida would have gained an additional House seat." App.108a.

The district court's reasoning appears to depend on an unstated assumption that a State with a higher imputation rate is less likely to have been undercounted. But the court cited nothing to support this assumption, and there is no apparent reason to believe that a State's imputation rate shows whether that State was overcounted or undercounted. Florida received some imputed residents—but nowhere near enough to offset the Bureau's severe undercount of Floridians. *See* App.92a, 100a, 102a.

Put concretely, on the Bureau's own data, the census failed to correctly count about two million

Floridians—9.2% of the State's population.[2] Rather than count them, the Bureau supplied imputed records for roughly 759,000.[3] Imputation thereby stood in for a third of the people the Bureau missed. After the Bureau's remaining adjustments, Florida's reported net shortfall was 3.48%, or roughly 760,000 people. App.108a. That shortfall would not exist had the Bureau conducted an accurate, direct-contact count rather than rely on unlawful imputation. *See id.*

A proper count would have given Florida another seat. *Id.* Minnesota received the last seat, App.104a, and a comparison to Minnesota's figures confirms the unsoundness of the district court's imputation-only analysis. According to the Bureau, while Florida's imputation rate ran 1.1 points higher than Minnesota's, its omissions ran 7.4 points higher.[4] So the district court plainly erred in ruling against Plaintiffs on causation and redressability based on the fact that simply "excluding whole-person imputation data" would "increase any undercount of Florida relative to the rest of the country." App.17a (emphasis omitted).

What's more, as Judge Merryday rightly noted, the Bureau's figures are generally qualified by a "confidence range." App.65a–66a (dissenting opinion). Thus, even if there were some ambiguity in Plaintiffs'

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[2] *See* Courtney Hill et al., *Census Coverage Estimates for People in the United States by State and Census Operations 2020 Post-Enumeration Survey Estimation Report*, U.S. Census Bureau 17 (2022), https://perma.cc/X5EP-W8YW (cited by the complaint at App.102a) (reflecting 9.2% omission rate).

[3] *See id.* (reflecting 3.6% whole-person census imputations).

[4] *See id.*

allegations or the underlying Bureau statistics, the proper resolution would be "explanation and exploration on a full record" in "a full adversary hearing"—not dismissal at the complaint stage. App.67a. In fact, even simply removing imputations—as the district court wrongly believed was the only relief sought here—*could* benefit Florida on the relevant state-by-state basis. The district court erred by disregarding the complaint's allegations and drawing inferences against Plaintiffs. *See Warth v. Seldin*, 422 U.S. 490, 501–02 (1975).

Along the same lines, the district court quoted the Bureau as "report[ing] that the use of whole-person imputation during the 2020 Census had 'very little impact on net coverage error estimates.'" App.16a–17a. But that report made an irrelevant methodological point about how to classify imputations,[5] and the complaint's allegations control at this stage. Regardless, any *nationwide* "net" assessment has no bearing on Plaintiffs' Florida claim. A national net figure adds overcounts and undercounts together so that they cancel. It does not show the movement of representation between States, which is the only thing this case concerns. The Bureau "estimated a net coverage error rate of [negative] 0.24 percent" "[a]t the national level."[6] Florida's net

[5] *See* Timothy Kennel, *2020 Post-Enumeration Survey: Defining Whole-Person Census Imputations* 5, U.S. Census Bureau (2023), https://perma.cc/33NM-SLA9 (cited by the complaint at App.94a).

[6] Shadie Khubba, Krista Heim & Jinhee Hong, *National Census Coverage Estimates for People in the United States by Demographic Characteristics: 2020 Post-Enumeration Survey*

coverage error, though, was negative 3.48 percent. App.108a. That overcounts elsewhere cancelled Florida's undercount, producing a small national figure, only reinforces causation here. Plaintiffs adequately alleged causation.

Redressability. Turning to redressability, the district court believed that the relevant question was whether it is "substantially likely that requiring Defendants to publish and send to the President corrected apportionment and redistricting data" would remedy Plaintiffs' injuries. App.18a. But in procedural-injury standing cases, it makes no difference if it is "uncertain" whether abiding by the proper procedure "would alter" the ultimate outcome. *Brown*, 600 U.S. at 566. Plaintiffs need not "establish with any certainty" such redressability. *Lujan*, 504 U.S. at 572 n.7; *see Brown*, 600 U.S. at 566–67. Plaintiffs need only allege that the proper procedure *could* "alter" the outcome. *Brown*, 600 U.S. at 566. That the government "might reach the same result exercising its discretionary powers" does not eliminate redressability. *Akins*, 524 U.S. at 25.

Plaintiffs' complaint adequately alleges redressability, given this Court's holding in *Evans* that the President's certificate to Congress providing each State's number of Representatives could be revised in "cases of court-determined legal error leading to a court-required revision of the underlying Secretarial 'report.'" 536 U.S. at 462.

Estimation Report 1, U.S. Census Bureau (2022), https://perma.cc/8RXP-PLQU (cited by the complaint at App.91a).

The district court conceded that this Court's *Evans* precedent allows for redressability via the potential of "a new census report." App.20a (citation modified). But it distinguished *Evans* on the ground that "the first post-2000 Census congressional election" had not yet occurred. *Id.* The court also noted "substantial changes in Representatives following two federal elections and ongoing nationwide redistricting." App.21a.

None of that forecloses "some" redress—which is all that is necessary to "satisfy the redressability component of Article III standing." *Diamond Alternative Energy, LLC v. EPA*, 606 U.S. 100, 114 (2025). Prior elections likely cannot be unwound. But Representatives are elected every two years, and redistricting under the 2020 census continues to occur. *See, e.g.*, *Equal Ground Educ. Fund, Inc. v. Secretary*, No. SC2026-0857 (Fla. June 10, 2026). The possibility of some redress thus remains available to Plaintiffs.

The district court noted that "the Bureau would need to make policy judgments about how" to correct the census. App.23a. But again, that is a normal feature of procedural-injury standing cases, where the order sought would require the government to "exercis[e] its discretionary powers lawfully." *Akins*, 524 U.S. at 25. Nothing in *Evans* or this Court's other procedural-injury standing cases limits redressable errors to purely "clerical or mathematical" ones. App.23a–24a. That this Court exercised jurisdiction in *Wisconsin* over a challenge to the 1990 census six years after the fact—a challenge that would have required the Bureau to devise statistical adjustments—confirms the point. 517 U.S. at 24.

No doubt, the Court in *Evans* noted that certificate revision would "make[] good sense" where a revision would be "mechanical" and where "new Representatives" have not been "selected." 536 U.S. at 462. But nothing in the opinion limits redressability to those situations. Again, *Evans* involved a claim much like this one, against imputation, and the Court held that the President *could* revise the statutory certificate when "court-determined legal error le[d] to a court-required revision of the underlying Secretarial 'report.'" *Id.* No more is necessary to show "redress." A procedural-injury plaintiff "never has to prove that" "the substantive result [will be] altered." *Massachusetts*, 549 U.S. at 518 (quoting *Sugar Cane Growers*, 289 F.3d at 94–95).

Last, the district court pointed out that the President is not a defendant, holding that "Plaintiffs have not carried their burden to show that the President would be 'substantially likely' to respond to new census data by effectuating a new apportionment." App.26a. But once again, *Evans* forecloses the district court's "hypothesis of inaction." App.69a (Merryday, J., dissenting). It held that courts "may assume it is substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision even though they would not be directly bound by such a determination." 536 U.S. at 460 (ellipsis omitted). So if the courts were to agree with Plaintiffs that the 2020 census method was unlawful, the assumption is that the President would seek to revise the certificate accordingly so that the remaining elections under that census are conducted using a lawful count. That assumption is strengthened by the President's existing doubts about the 2020 census. App.107a.

Thus, the district court's dismissal for lack of standing conflicts with *Evans* and this Court's procedural-injury standing precedents. And as explained in Part III below, the district court's reasoning makes it practically impossible to challenge census methods. Review is needed.

II. The district court's statute-of-limitations holding defies the statutory text and this Court's precedents.

The district court also badly erred in holding that Plaintiffs' complaint was "time-barred on its face." App.54a. The court relied on 28 U.S.C. § 1658(a), which states that "[e]xcept as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues."

The problem with relying on § 1658 is that, when it was enacted in 1990,[7] another statute "otherwise provided" a different statute of limitations for actions against the United States. Under 28 U.S.C. § 2401(a), "[e]xcept as provided by chapter 71 of title 41, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." This six-

[7] Judicial Improvements Act of 1990, Pub. L. No. 101-650, sec. 313(a), § 1658, 104 Stat. 5089, 5114.

year period was enacted in 1948,[8] and it facially covers "every civil action commenced against the United States."

Plaintiffs' case is a "civil action commenced against the United States." Not only is the United States a defendant, but the various official-capacity defendants are also treated as the "sovereign itself." *Lewis v. Clarke*, 581 U.S. 155, 162 (2017); *see* App.83a. Thus, § 2401(a)'s six-year period applies.

Because § 2401(a) applies, § 1658's four-year period could not apply. Section 1658(a) expressly excepts actions where a statute of limitations is "otherwise provided by law." Both at the time of § 1658(a)'s enactment and today, § 2401(a) provides a statute of limitations that governs Plaintiffs' claims against the United States.

Had Congress wanted to exempt actions like Plaintiffs' from § 2401(a), it could have done so—just as it exempted actions brought under chapter 71 of title 41, the Contract Disputes Act. *Compare* 62 Stat. at 971 (no exceptions originally), *with* 28 U.S.C. § 2401(a) (current exception). But it did not do so for actions under § 209.

This Court's precedents support this conclusion. In *Kendall v. United States*, the Court considered a statute providing "that every claim against the United States, cognizable by the court of claims . . . shall be forever barred" absent a petition filed "within six years after the claim first accrues." 107 U.S. 123, 124 (1883). The Court addressed the question, "What

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[8] Act of June 25, 1948, ch. 646, 62 Stat. 869, 971.

claims are thus barred?" *Id.* at 125. According to the Court, "[t]he express words of the statute leave no room for contention": "*Every* claim—except those specially enumerated—is forever barred unless asserted within six years from the time it first accrued." *Id.* Because § 2401(a) also facially extends to "every claim"—including this one—it "otherwise" provides a statute of limitations period, making § 1658(a) irrelevant.

The district court concluded otherwise based on its view that § 1658 was "a more specific statute" that "displaces" "the general statute" of § 2401(a). App.50a.[9] "[A] commonplace of statutory construction" is "that the specific governs the general." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). But the general/specific canon "applies only to conflict[s] between laws." *Nitro-Lift Techs., LLC v. Howard*, 568 U.S. 17, 21 (2012).

There is no conflict here: § 1658(a) expressly subordinates itself to limitations periods "otherwise provided by law." Phrases like "except as provided in . . ." show that "one rule should prevail over another." *Atl. Richfield Co. v. Christian*, 590 U.S. 1, 16 (2020). And § 2401(a) squarely provides a limitations period for this action against the United States. So even though § 2401(a) could itself be "displace[d]" by "the timing provision of a more specific statute," *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 808 (2024), § 1658(a) could not apply as a more specific statute because it

[9] None of the decisions cited by the district court appears to have squarely addressed this question. *See* App.70a–71a (Merryday, J., dissenting).

defers to periods otherwise provided by law. The "limitation of [§ 2401(a)] prevails." *Atl. Richfield*, 590 U.S. at 17.

That conclusion is bolstered by the rule that courts "approach federal statutes touching on the same topic with a 'strong presumption' they can coexist harmoniously." *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 63 (2024). "Only by carrying a 'heavy burden' can a party convince [the courts] that one statute 'displaces' a second." *Id.* The "strong presumption" is that "Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (citation modified).

Here, § 1658(a) does not direct the suspension of preexisting law. Rather, it *defers* to limitations periods "otherwise provided by law." Section 2401(a) contains such a period, and it generally does *not* defer to other provisions—applying to "every civil action commenced against the United States." Defendants did not carry the heavy burden of showing that Congress intentionally wrote a provision conflicting with—and superseding—§ 2401(a).

Even putting aside § 1658(a)'s reference to "otherwise provided by law," the district court's general/specific conflict analysis would fail on its own terms. The district court believed that § 1658(a) was "more specific" because it applies to "only civil actions arising under federal statutes enacted since 1990." App.53a. But § 2401(a) applies only to suits against the United States. Even the district court called § 1658(a) a "default statute of limitations," App.50a, which this Court has interpreted broadly "to apply whenever a post-1990 enactment creates a new right to maintain an action." *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 382 (2004). The district court never explained why a period covering every cause of action arising under 35 years of federal statutes is "more specific" than one covering a single defendant. If anything, § 2401(a) "is the more specific statute." App.70a (Merryday, J., dissenting).

In all events, § 1658(a) expressly subordinates itself to § 2401(a), eliminating any conflict. Under § 2401(a), a six-year limitations period applies. And based on the district court's own conclusion that Plaintiffs' cause of action arose sometime in 2021, App.10a, 50a, their action filed in September 2025 is not time-barred. The district court deviated from this Court's precedents in holding otherwise.

III. The case presents significant questions worthy of review.

Taken together, the two holdings below leave § 209 with almost nothing to do. The first says a plaintiff cannot sue once elections and redistricting have begun; the second starts the limitations clock before the Bureau publishes data showing an injury. A plaintiff who waits for proof loses on redressability, and, according to other recent decisions, a plaintiff who sues without it loses on ripeness. Congress wrote § 209 to open the courthouse to an extraordinarily broad class of litigants, and lower courts have closed it to all of them. The decision insulates unlawful census methods from review—calcifying statistical misuse that is open to tampering and that distorts the foundation of our self-government.

A. The decision below makes meaningful relief under § 209 almost impossible.

Congress built § 209 as a wide-open door—a cause of action for "an extraordinarily broad array of persons." App.63a. And the district court "acknowledge[d]" "that Section 209 does not bar postcensus lawsuits." App.19a. But it held that Article III jurisdiction evaporates once elections or "ongoing nationwide redistricting" start. App.21a. Especially when combined with other recent decisions finding precensus § 209 actions unripe, the decision below creates a "perhaps insurmountable barrier, a legal and temporal trap." App.73a (Merryday, J., dissenting). Not only does the decision below defy *Evans*, but it makes it practically impossible for a plaintiff to adequately investigate a § 209 claim and obtain meaningful relief for unlawful census methods.

The district court held Plaintiffs' cause accrued on April 26, 2021, when the Bureau "released the state-by-state population figures used to apportion seats in the U.S. House of Representatives," or at the latest August 12, 2021, when it "released its 'redistricting file' data set." App.8a, 10a, 50a. But the Bureau's estimate that Florida was undercounted did not exist until around May 2022. *See* App.108a. By that point, redistricting in Florida was done. App.105a. And disclosures about how extensive the use of whole-person imputations was in the 2020 census did not come until July 2023—after a round of nationwide redistricting and elections was complete.[10]

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[10] *See* Kennel, *supra* note 5.

Given that redistricting and election processes began within days after the Bureau delivered the redistricting data,[11] it is unclear when Plaintiffs could have sued on the theory adopted below. There was essentially no time between delivery of the redistricting data and redistricting starting. And had Plaintiffs tried to sue *before* the delivery of the redistricting data, they would have encountered similar jurisdictional hurdles. Another district court, confronted with a § 209 challenge to methods used in the 2020 census, held that plaintiffs lacked standing in June 2021 because "the Bureau has not yet delivered its redistricting data." *Alabama v. U.S. Dep't of Com.*, 546 F. Supp. 3d 1057, 1070 (M.D. Ala. 2021). The court reasoned that "it is not presently known whether the Individual Plaintiffs' votes will be diluted (or enhanced, or affected at all)" by the challenged method, and the Plaintiffs "have no basis for believing they were, or will be, under-counted." *Id.* at 1070–71. That "ma[de] any prediction about future injury just that—*a prediction*." *Id.* at 1070; *cf. Common Cause*, 506 F. Supp. 3d at 55–56 (invoking "prudential ripeness" to bar a § 209 claim).

These decisions effectively close the door on § 209 actions. The *Alabama* decision held that a claim was unripe even after the point that the decision below believed that the cause of action accrued. *See* 546 F. Supp. 3d at 1071–72. And it held that a claim would

[11] *See, e.g.*, Oregon State Legislature, *Senate Interim Committee on Redistricting*, https://perma.cc/KU33-57MM (reflecting a redistricting meeting six days after the Bureau released its redistricting file data set); *see also Common Cause v. Trump*, 506 F. Supp. 3d 39, 54 (D.D.C. 2020) ("[S]tate redistricting . . . begins shortly after apportionment ends.").

be unripe until a plaintiff could show an undercount. *See id.* But the Bureau did not release estimates of these undercounts until redistricting was largely done and the 2022 elections were in progress. At that point, according to the decision below, redressability had evaporated, because it would be "impracticable" to correct the use of an unlawful census method. App.24a.

Therefore, as Judge Merryday put it, the decision below "leave[s] a prospective litigant an excruciatingly brief time, perhaps a matter of weeks, if any time at all," "within which to begin an action." App.72a (dissenting opinion). In that short time, "a plaintiff must analyze the data and develop a good faith belief in the basis for the claim"—and somehow discover problems that the Bureau itself has not identified. *Id.* And this barrier "occur[s] in the face of a congressional enactment that manifestly undertakes to broaden the number of qualified litigants and the circumstances under which the litigants can assert a claim respecting the census and legislative apportionment." App.72a–73a.

If Congress had intended to limit how long plaintiffs have to bring § 209 claims, it knew how to enact shorter statutes of limitations. But it did not. Nor did it limit the statute's scope to mechanical errors, but expressly targeted an "unconstitutional census." § 209(a)(7). By effectively imposing a weeks-long period to sue—if that, given that there would likely be no sound evidence of miscounting within days of the data's release—the district court reduced § 209 to an ink blot. Because Congress intended for

§ 209 relief to be available, and the decision below largely forecloses it, this Court should grant review.

B. Review is needed to safeguard the enumeration contemplated by the Constitution.

Stripping any statute of its force is bad enough. But leaving citizens no way to address an unlawful census strikes at "the electoral process—a process of the most fundamental significance under our constitutional structure." *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 77 (2026) (citation modified). "If the census and the vote are not right, nothing that follows from them is right." App.68a (Merryday, J., dissenting). "[T]he accuracy and integrity of the census, intimately akin to the accuracy and integrity of both the vote and the vote count in an election, is the foundation of legitimate government." *Id.* That is why Congress recognized that the census "is one of the most critical constitutional functions our Federal Government performs." § 209(a)(5).

But the decision below makes it impossible to redress an unlawful census, no matter the cause of action. In effect, that decision would let a decade of elections proceed on unlawful census data—distorting every citizen's vote, and thereby our self-government.

What's worse, with each decade, the census grows more detached from the Constitution's command of an "actual Enumeration." U.S. Const. art. I, § 2, cl. 3. "The text, history, and a review of the original understanding of the Census Clause confirm that an actual enumeration means an actual count, without estimation." *Evans*, 536 U.S. at 506 (Thomas, J., concurring in part and dissenting in part, joined by Kennedy, J.); *see id.* at 489–510; *see also Dep't of Com.*, 525 U.S. at 349 (Scalia, J., concurring in part, joined by, *inter alia*, Rehnquist, C.J.) ("[A] strong case can be made that an apportionment census conducted with the use of 'sampling techniques' is not the 'actual Enumeration' that the Constitution requires."); William Michael Treanor, *The Case of the Dishonest Scrivener*, 120 Mich. L. Rev. 1, 71 (2021) ("'[A]ctual enumeration' requires counting.").

"Departing from past practice, imputation was first used in the year 1960 census," and has been used "in every decennial census since then." *Evans*, 536 U.S. at 506 (Thomas, J., concurring in part and dissenting in part). Already, the Bureau has said it will use count imputation again in 2030.[12] While the Bureau after the 2010 census reported no statistically significant over- or under-counts in any State's population, the 2020 census's heightened use of count imputation yielded such miscounts in 14 States. App.98a. And "statistical adjustment" "open[s] the door to political tampering." *Wisconsin*, 517 U.S. at 11–12.

Even *Evans* did not sanction what the Bureau does now, as that decision did "not deal with the substitution of statistical methods for efforts to reach households and enumerate each individual." 536 U.S. at 477. Regardless, the Court's merits conclusion in *Evans*—that an "actual Enumeration" allows statistical alchemy in place of counting—was

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[12] *See* U.S. Census Bureau, *2030 Census Operational Plan* 51 (2025), https://perma.cc/6DRF-PGUA.

egregiously wrong and should be overruled. Indeed, the district court used *Evans*'s conclusion as a reason to deny Plaintiffs standing. App.33a. While that impermissibly conflates standing with the merits, *see Brown*, 600 U.S. at 564, the more important point is that until *Evans*'s conclusion about an "actual Enumeration" is overruled, the census will continue to undermine and distort our self-government. And by making it practically impossible to bring claims like this one—which suggests reconsideration of *Evans*—the decision below renders this unlawful distortion immune from judicial review. The Court should review this important case.

CONCLUSION

For these reasons, the Court should note probable jurisdiction or summarily reverse the district court's order.

Respectfully submitted,

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AUGUST 6, 2026

APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION & ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION, FILED JULY 7, 2026

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:25-cv-02486-WFJ-SDM-RSR

UNIVERSITY OF SOUTH FLORIDA COLLEGE REPUBLICANS, MICHAEL FUSELLA, PINELLAS COUNTY YOUNG REPUBLICANS, PARISA MOUSAVI, GRETCHEN ZOELLER, AND BYRON L. DONALDS,

Plaintiffs,

v.

SECRETARY OF COMMERCE AND ACTING DIRECTOR, U.S. CENSUS BUREAU,

Defendants,

ALLIANCE FOR RETIRED AMERICANS, MANUEL GUERRERO, AND CAMERON DRIGGERS,

Intervenors-Defendants.

Filed July 7, 2026

OPINION & ORDER

Before Rosenbaum, *Circuit Judge*, and Jung and Merryday, *District Judges*.

PER CURIAM:

Before the Court are Defendants Secretary of Commerce Howard W. Lutnick and acting Director of the U.S. Census Bureau George Cook ("Defendants"); and Intervenors-Defendants Alliance for Retired Americans, Cameron Driggers, and Manuel Guerrero's (collectively "Intervenors") Motions to Dismiss the Third Amended Complaint ("Complaint"). Dkts. 96, 97. Plaintiffs, the University of South Florida College Republicans and its president, Michael Fusella; the Pinellas County Young Republicans and its president, Parisa Mousavi; Byron L. Donalds (in his official capacity as a Member of Congress); and Gretchen Zoeller (collectively "Plaintiffs") have responded in opposition. Dkt. 103. The Intervenors have also replied in further support. Dkt. 105. For the reasons discussed below, we grant the motions to dismiss the Complaint with prejudice.

I. Background[1]

A. The Parties

Plaintiff University of South Florida College Republicans ("USF Republicans") is a chapter of the College Republican National Committee based in Tampa, within Florida's 15th Congressional District. Dkt. 88

1. Unless otherwise noted, this section recounts facts as alleged in Plaintiffs' Complaint, which the Court accepts as true for purposes of resolving these motions to dismiss.

¶ 13. The group describes its goal as recruiting, training, and mobilizing students to "advocate for conservative ideals" and "participate in civic events," increasing their familiarity with the political process. *Id.* Plaintiff Michael Fusella is the president of USF Republicans. *Id.* ¶ 14. He resides in Florida's 15th Congressional District. *Id.*

Plaintiff Pinellas County Young Republicans ("Pinellas Young Republicans") is an organization designed to "attract young people and provide for them an opportunity to achieve political expression and recognition, more effectively participate in the election process, and better develop and uphold the principles of the Republican Party . . . ." *Id.* ¶ 15. Pinellas Young Republicans has an address in St. Petersburg, Florida, within Florida's 14th Congressional District. *Id.* Plaintiff Parisa Mousavi is a resident of the 14th Congressional District who serves as president of Pinellas Young Republicans. *Id.* ¶ 16. Newly added Plaintiff, Gretchen Zoeller, resides in the 19th Congressional District of Florida. *Id.* ¶ 17.

Plaintiff Byron L. Donalds is a member of the U.S. House of Representatives, where he represents Florida's 19th Congressional District. *Id.* ¶ 18. He has served in Congress since January 2021. *Donalds, Byron*, Biographical Directory of the U.S. Cong., https://bioguide.congress.gov/search/bio/D000032 [https://perma.cc/GU8P-FTZB] (last visited July 6, 2026).[2]

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2. The Court may take judicial notice of official government publications and websites. *See* Fed. R. Evid. 201(b)(2); *Coastal Wellness Ctrs., Inc. v. Progressive Am. Ins. Co.*, 309 F. Supp. 3d 1216, 1220 n.4 (S.D. Fla. 2018); *Dimanche v. Brown*, 783 F.3d 1204, 1213 n.1 (11th Cir. 2015).

Defendant Howard W. Lutnick is the U.S. Secretary of Commerce. Dkt. 88 ¶ 19. In that capacity, he leads the U.S. Department of Commerce, which encompasses the U.S. Census Bureau. *See Bureaus and Offices*, U.S. Dep't of Com., https://www.commerce.gov/bureaus-and-offices [https://perma.cc/9TLJ-TY5S] (last visited July 6, 2026). Defendant George Cook is the Acting Director of the U.S. Census Bureau, which is responsible for conducting the decennial census. *See* 13 U.S.C. § 141(a); Dkt. 88 ¶ 19.

Intervenor Alliance for Retired Americans is a nonprofit organization with 4.4 million members nationwide, including more than 200,000 in Florida. Dkt. 29-1 ¶ 2. Its membership consists of retirees, many of whom live in "group quarters like nursing homes and assisted living facilities." *Id.* ¶ 7. Intervenor Cameron Driggers is a graduate student at the University of Central Florida. Dkt. 29-2 ¶ 3. Driggers is a registered voter in Florida's 10th Congressional District, where he lives in on-campus student housing. *Id.* ¶¶ 2, 4. Intervenor Manuel Guerrero is an undergraduate student at the University of Central Florida. Dkt. 29-3 ¶ 3. Guerrero is also a registered voter in Florida's 10th Congressional District who lives in on-campus student housing. *Id.* ¶¶ 2, 4.

B. Statistical Methods

In a change from the prior complaints, Plaintiffs now broadly challenge the "statistical methods" used during the 2020 U.S. Census, which allegedly "resulted in inaccurate population counts in certain States, particularly Florida." Dkt. 88 ¶¶ 2-3. "[T]he Census Bureau had to fundamentally alter its approach to data collection and processing because of the COVID-19 pandemic." *Id.* ¶ 63 (citation omitted); *see also* U.S. Census Bureau, *2020 Census Operational Plan Version 5.0* 173 (2022) [hereinafter "5.0 Plan"], https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan5-and-memo.pdf [https://perma.cc/8XX6-YA5F]. Plaintiffs allege the Bureau "omitted" an estimated 18.8 million people from the 2020 Census. Dkt. 88 ¶¶ 68-71 (citations omitted). The Bureau then attempted to "impute" the missing persons into the count. *Id.* ¶ 69.[3]

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3. There are two types of imputation: count imputation and characteristic imputation. *See* Pat Cantwell *How We Complete the Census When Households or Group Quarters Don't Respond*, U.S. Census Bureau, (Apr. 16, 2021, last revised Aug. 21, 2023), https://www.census.gov/newsroom/blogs/random-samplings/2021/04/imputation-when-households-or-group-quarters-dont-respond.html [https://perma.cc/B5DK-BH2E]. Count imputation increases the population counts for enumeration, while characteristic imputation fills in missing information about a household's characteristics, such as age or race. *Id.* While not specified in the Complaint, Plaintiffs are challenging the Bureau's use of count imputation, since characteristic imputation does not affect the population count for enumeration. *Id.*; *see* Dkt. 88 ¶¶ 2-3, 8, 69-71, 103. Curiously, despite the Complaint's challenge to the Bureau's use of count imputation, Plaintiffs extensively cite to the Bureau's *2020 Census Item Nonresponse and Imputation Assessment Report: A New Design for the 21st Century*, which is a report on the agency's use of characteristic imputation. *See* Dkt. 88 ¶¶ 70, 72-77, 84-87 (citing Jessica DeJesus & Sarah Konya, *2020 Census Item Nonresponse and Imputation Assessment Report: A New Design for the 21st Century* 1 (2023), https://www2.census.gov/programs-surveys/decennial/2020/program-management/evaluate-docs/EAE-2020-item-nonresponse-assessment.pdf [https://perma.cc/VQ2A-4R9K] ("Characteristic imputation, applied after the household population is established, is in scope for this assessment; count imputation is not in scope.")).

Count "[i]mputation is a statistical technique used to fill in missing information," which "add[s] or subtract[s] counts to or from the enumeration of the population as a result of statistical inference." *Id.* ¶¶ 70-71 (citations omitted). Filling in missing data with count imputation yields a more accurate census. *See* Pat Cantwell, *How We Complete the Census When Households or Group Quarters Don't Respond*, U.S. Census Bureau (Apr. 16, 2021, last revised Aug. 21, 2023) [hereinafter "*How We Complete the Census*"], https://www.census.gov/newsroom/blogs/random-samplings/2021/04/imputation-when-households-or-group-quarters-dont-respond.html [https://perma.cc/B5DK-BH2E] ("If we were to leave the count for an address blank after all attempts to obtain a response failed, it would be like assigning a count of 0. This would be less accurate overall than imputing a number statistically, since we often have information that people are living there."); Dkt. 88 ¶ 69 (citing *How We Complete the Census*).

Whole-person imputation is a form of count imputation that "uses administrative records or other 'imputation methods' based on people in a similar nearby household to fill 'person characteristics.'" *Id.* ¶ 81 (quoting *2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022), https://www.census.gov/library/stories/2022/05/2020-census-undercount-overcount-rates-by-state.html [https://perma.cc/B49T-E6HZ]); *see also* Shadie Khubba et al., *National Census Coverage Estimates for People in the United States by Demographic Characteristics: 2020 Post-Enumeration Survey Estimation Report* 6 (2022) [hereinafter "PES

Coverage Estimates Report"], https://www2.census.gov/programs-surveys/decennial/coverage-measurement/pes/national-census-coverage-estimates-by-demographic-characteristics.pdf [https://perma.cc/8RXP-PLQU] ("The [post-enumeration survey] tallied 10.9 million whole-person census imputations in the 2020 Census—all characteristics were imputed for these census person records.").

Plaintiffs claim that the Census Bureau's post-enumeration survey "found that 10.9 million people, or 3.4% of the population, were imputed through whole-person imputation in the 2020 Census." Dkt. 88 ¶ 79 (citing Timothy Kennel, *2020 Post-Enumeration Survey: Defining Whole-Person Census Imputations* 1 (2023) [hereinafter "*Defining Whole-Person Census Imputations*"], https://www2.census.gov/programs-surveys/decennial/coverage-measurement/pes/defining-whole-person-census-imputations.pdf [https://perma.cc/33NM-SLA9]); *see also* PES Coverage Estimates Report 4-6 ("Whole-person imputations represented 3.4 percent of the total census count. . . . The [post-enumeration survey] tallied 10.9 million whole-person census imputations in the 2020 Census.").

Importantly, the Bureau uses imputation only as a last resort to fill any remaining gaps in the census data. *See How We Complete the Census* (noting that if the Bureau does not get an initial response from an address it will take the following steps: (1) the agency will reference other administrative records, including prior census survey responses or tax return information; (2) if such administrative records are not available, the enumerators will visit the address again; (3) if the residents remain nonresponsive, the enumerators obtain proxy responses from someone else with knowledge, such as a neighbor or landlord; and (4) finally, as a last resort, the Bureau will use imputation to fill the remaining gaps in the census data).

The Census Bureau released numerous data sets and publications after the 2020 Census. Dkt. 88 ¶ 90. On April 26, 2021, it publicly released the state-by-state population figures used to apportion seats in the U.S. House of Representatives. *See* Press Release, U.S. Census Bureau, 2020 Census Apportionment Results Delivered to the President (Apr. 26, 2021), https://www.census.gov/newsroom/press-releases/2021/2020-census-apportionment-results.html [https://perma.cc/X84Q-YLEU]; *see* 2 U.S.C. § 2a (requiring the President to submit state population to Congress, determining apportionment of congressional seats). A few months later, on August 12, 2021, the Bureau publicly released its "redistricting file" data set, *see 2020 Census: Redistricting File (Public Law 94-171) Dataset*, U.S. Census Bureau (Aug. 12, 2021), https://www.census.gov/data/datasets/2020/dec/2020-census-redistricting-summary-file-dataset.html [https://perma.cc/D8FN-ESLG], which Florida used to draw legislative district lines. Dkt. 88 ¶¶ 131, 134.

After each census, the Census Bureau conducts a post-enumeration survey ("PES") that seeks to estimate the possible "net coverage error rates at the national level" in the Bureau's population counts. *Id.* ¶ 79 (quoting PES

Coverage Estimates Report 1). The PES data after the 2020 Census suggested that the Bureau undercounted Florida's population by approximately 3.48 percent. *Id.* ¶ 115 (citing Courtney Hill et al., *Census Coverage Estimates for People in the United States by State and Census Operations: 2020 Post-Enumeration Survey Estimation Report* 16 (2022) [hereinafter "*Estimates for People in the United States by State*"], https://www2.census.gov/programs-surveys/decennial/coverage-measurement/pes/census-coverage-estimates-for-people-in-the-united-states-by-state-and-census-operations.pdf [https://perma.cc/P6W8-SH8N]). However, the Bureau also reported that the use of whole-person imputation during the 2020 Census had "very little impact on net coverage error estimates." *See Defining Whole-Person Census Imputations* 5. Among the three theories of injury Plaintiffs claim to have suffered,[4] they allege that "Florida would have gained an additional House seat and an additional vote in the Electoral College" if the "vast use" of whole-person imputation had not been employed. Dkt. 88 ¶ 146.

C. Procedural History

On September 15, 2025, nearly five years after the 2020 Census was finalized, Plaintiffs USF Republicans, Fusella, Pinellas Young Republicans, and Mousavi sued

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4. Specifically, the theories of injury are vote dilution, Dkt. 88 ¶¶ 143-47, funding injury, *id.* ¶¶ 148-76, and informational injury to Representative Donalds, *id.* ¶¶ 177-84.

Defendants, requesting a three-judge panel. Dkts. 1, 2.[5] Plaintiffs filed their Second Amended Complaint a couple of months later, in November 2025, adding Congressman Donalds to the case. Dkt. 43.

On February 3, 2026, the Court dismissed without prejudice the Second Amended Complaint because Plaintiffs' claims under Section 209 of Pub. L. No. 105-119, § 209(b), 111 Stat. 2440, 2481 (1997) [hereinafter "Section 209"], were time-barred by 28 U.S.C. § 1658(a)'s default four-year statute of limitations on "'civil action[s] arising under an Act of Congress enacted after' December 1, 1990." Dkt. 84 at 10 (quoting 28 U.S.C. § 1658(a)). We explained that "Plaintiffs don't argue that a different statute of limitations displaces Section 1658's four-year default," and that Plaintiffs' claims accrued by either "April 26, 2021, when the Census Bureau released its counts that had used" the previously challenged statistical methods or, at the latest "August 12, 2021, [when] the Census Bureau publicly released its more granular redistricting data." *Id.* at 10, 12-13. The Court accordingly dismissed the Second Amended Complaint as time-barred but granted leave to amend. *Id.* at 19.

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5. This case was randomly assigned to Judge William F. Jung, who referred Plaintiffs' request for a three-judge panel to the Chief Judge of the U.S. Court of Appeals for the Eleventh Circuit. *See* Dkt. 25. Chief Judge William Pryor designated the three judges forming this panel to hear the case together if the case warrants a three-judge panel. Dkt. 27. After receiving additional briefing on the question, the Court concluded that the three-judge panel should hear the case. *See* Dkt. 57 ¶¶ 5-6.

On February 17, 2026, Plaintiff filed the operative Third Amended Complaint, arguing that the Bureau's imputation methods: (1) violated the U.S. Constitution's Enumeration Clause, U.S. Const. art. I, § 2; and (2) exceeded the Commerce Secretary's authority under 13 U.S.C. § 141(a), which empowers the Secretary to take the census "in such form and content as he may determine, including the use of sampling procedures and special surveys." Dkt. 88 ¶¶ 43, 187-188, 193. Based on these alleged violations, the Complaint brings five counts: Counts I and II under Section 209 and Counts III—V under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) ("APA"). *Id.* ¶¶ 185-217. To remedy the alleged harms, Plaintiffs seek declaratory and injunctive relief, asking this Court to order a nationwide recount: the Court is to declare that "[t]he 2020 Census apportionment violates the U.S. Constitution and federal law," require Defendants to "account for the 18.8 million omissions by means of direct contact," and "prepare and publish a corrected or supplemental Pub. L. No. 94-171 redistricting file dataset for the 2020 Census that excludes population data that was substituted with results derived primarily from statistical methods and is otherwise a constitutionally compliant actual enumeration." Dkt. 88 ¶¶ 190, 195, 203, 209, 217; *id.* at 43-44. The Court is then asked to order Defendants to transmit the corrected and updated data to the President. *Id.* at 43-44. After Plaintiffs filed their Third Amended Complaint, Defendants and Intervenors filed the instant motions to dismiss, which are now pending before the Court. Dkts. 96, 97.

II. Legal Standards

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) tests whether the court has subject matter jurisdiction. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95, 118 S. Ct. 1003, 140 L. Ed. 2d 210 (1998). This is because "[f]ederal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Ins. of Am.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994). It is presumed that a federal court lacks jurisdiction in a case until the plaintiff demonstrates the court has jurisdiction over the subject matter. *See id.* (citing *Turner v. Bank of N. Am.*, 4 U.S. 8, 11, 1 L. Ed. 718, 4 Dall. 8 (1799); *McNutt v. Gen. Motors Acceptance Corp. of Ind.*, 298 U.S. 178, 182-83, 56 S. Ct. 780, 80 L. Ed. 1135 (1936)). "[B]ecause a federal court is powerless to act beyond its statutory grant of subject matter jurisdiction, a court must zealously [e]nsure that jurisdiction exists over a case . . . ." *Smith v. GTE Corp.*, 236 F.3d 1292, 1299 (11th Cir. 2001).

A defendant may challenge subject matter jurisdiction facially or factually. *See Douglas v. United States*, 814 F.3d 1268, 1274-75 (11th Cir. 2016). A facial attack requires the court to examine the complaint, taken as true, to determine whether the plaintiff has sufficiently alleged a jurisdictional basis. *Id.* at 1274. A factual attack "challenges the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits are considered." *Id.* at 1278 (citation modified).

Federal Rule of Civil Procedure 12(b)(6) requires a complaint to contain "enough facts to state a claim to relief that is plausible on its face" to survive a motion to dismiss. *Littlejohn v. Sch. Bd. of Leon Cnty.*, 132 F.4th 1232, 1238 (11th Cir. 2025) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). That means that the plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (citing *Twombly*, 550 U.S. at 556). Courts will grant a Rule 12(b)(6) motion to dismiss based on the statute of limitations having run if the untimeliness is apparent on the face of the complaint. *Karantsalis v. City of Mia. Springs*, 17 F.4th 1316, 1319-20 (11th Cir. 2021). When assessing the "face" of the complaint, we must consider "the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Wells v. Brown*, 58 F.4th 1347, 1357 n.2 (11th Cir. 2023) (en banc) (quoting *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322, 127 S. Ct. 2499, 168 L. Ed. 2d 179 (2007)).

III. Discussion

Defendants and Intervenors request dismissal of Plaintiffs' Complaint because Plaintiffs lack Article III standing, the claims are time-barred by the four-year statute of limitations in 28 U.S.C. § 1658, and the new APA claims do not save this untimely suit. We agree and dismiss this case. We dismiss with prejudice because Plaintiffs did not request leave to amend and the persistent defects in their pleadings show amendment would be futile.

Our discussion follows in four parts. First, the Court explains that Plaintiffs lack Article III standing with respect to all three of their asserted injuries. Second, even if Plaintiffs had standing, we conclude that Plaintiffs' claims are still untimely under 28 U.S.C. § 1658(a), as the six-year statute of limitations under 28 U.S.C. § 2401(a) does not apply to Section 209 claims. We also clarify that Plaintiffs cannot recast their Section 209 claims as some sort of hybrid APA claim. Third, assuming *arguendo* Plaintiffs' APA claims are cognizable, we note why there is no proper final agency action alleged. Fourth, we discuss why dismissal with prejudice is appropriate here.

A. Article III Standing

Defendants and Intervenors spend substantial time challenging Plaintiffs' standing to bring this action. Article III, § 2, of the Constitution limits a federal court's jurisdiction to "cases" or "controversies." U.S. Const. art. III, § 2. "No principle is more fundamental to the judiciary's proper role in our system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies." *Raines v. Byrd*, 521 U.S. 811, 818, 117 S. Ct. 2312, 138 L. Ed. 2d 849 (1997) (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 37, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976)). As such, "[t]o establish standing, . . . a plaintiff must demonstrate (i) that she has suffered or likely will suffer an injury in fact,

(ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380, 144 S. Ct. 1540, 219 L. Ed. 2d 121 (2024) (citation omitted).

Here, Plaintiffs do not establish standing as to any of their alleged injuries. Plaintiffs allege three broad categories of injuries: vote dilution due to the loss of one U.S. House of Representatives seat, Dkt. 88 ¶¶ 143-47; the loss of funding for federal programs based on census population totals, *id.* ¶¶ 148-76; and Representative Donalds's informational injury based on his reliance on inaccurate census data, *id.* ¶¶ 177-84.

The first two alleged injuries, vote dilution and funding loss, fail on causation and redressability. The third, Representative Donalds's asserted informational injury, is neither cognizable as an injury in fact nor judicially redressable.

1. Vote Dilution & Loss of Funding

Each requirement of Article III standing is essential. For Plaintiffs' asserted vote-dilution and funding-loss injuries, the Court focuses on causation and redressability, two requirements that "often travel together." *Polelle v. Fla. Sec'y of State*, 131 F.4th 1201, 1222 (11th Cir. 2025) (quoting *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021)).

a. Causation

To satisfy the causation requirement, a plaintiff must show that his asserted injury in fact is "fairly traceable to the challenged action of the defendant," i.e., the defendant's conduct that the plaintiff alleges was unlawful. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000).

Plaintiffs fail to establish this prong. They allege that Defendants used "statistical methods" in conducting the 2020 Census. *E.g.*, Dkt. 88 ¶ 2. They also allege that a post-census survey showed that Florida was undercounted in the 2020 Census. *See id.* ¶ 4. But Plaintiffs do not plausibly allege a causal connection between the two. The Complaint contains only conclusory allegations that unlawful statistical methods caused Florida's alleged undercount. *See id.* ¶¶ 103, 146. Even farther from the mark are the allegations that Defendants' use of statistical methods resulted in "inaccurate" population counts, *id.* ¶ 3, or—even more vaguely—that Defendants used such methods in "producing" or "adding to and subtracting from" the census's results, *see id.* ¶¶ 188, 193, 200, 207, 213.

Although, on a motion to dismiss, "we must take all of the factual allegations in the complaint as true, we 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). "A conclusory statement that a statutory violation caused an injury is not enough . . . ." *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 928 (11th Cir. 2020) (en banc). That's especially so here, where the Bureau has reported that the use of whole-person imputation during the 2020 Census had "very little impact on net coverage error estimates," *see Defining Whole-Person Census Imputations* 5, and Plaintiffs allege no facts to undermine this assessment. Plus, Plaintiffs cite *Estimates for People in the United States by State*, which states that Florida's whole-person imputation rate was 3.6%, while the nationwide rate was 3.4%. So based on Plaintiffs' own citations, excluding whole-person imputation data would thus seem to *increase* any undercount of Florida relative to the rest of the country.

Because Plaintiffs make only conclusory allegations that their alleged vote-dilution and funding-loss injuries are fairly traceable to Defendants' use of statistical methods, those injuries do not confer Article III standing.

b. Redressability

Plaintiffs' failure on causation is dispositive. But Plaintiffs also fail to show that their alleged vote-dilution and funding-loss injuries would satisfy the redressability requirement. Redressability has two settled principles. First, a plaintiff needs to show that it is "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (quoting *Simon*, 426 U.S. at 38, 43). In other words, there must be a "'substantial likelihood' that the requested relief will remedy the alleged injury in fact." *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 771 (2000), 120 S. Ct. 1858, 146 L. Ed. 2d 836 (quoting *Simon*, 426 U.S. at 45).

Second, "it must be the effect of the court's judgment on the defendant—not an absent third party—that redresses the plaintiff's injury, whether directly or indirectly." *Lewis v. Governor of Ala.*, 944 F.3d 1287, 1301 (11th Cir. 2019) (citation modified); *see also Lujan*, 504 U.S. at 562 (casting doubt on redressability theories that depend on "unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict"). Stated differently, whether a judicial ruling would redress an alleged injury cannot rest on speculation about how third parties might respond. *See Haaland v. Brackeen*, 599 U.S. 255, 294, 143 S. Ct. 1609, 216 L. Ed. 2d 254 (2023) ("It is a federal court's judgment, not its opinion, that remedies an injury; thus it is the judgment, not the opinion, that demonstrates redressability.").

Plaintiffs request declaratory and mandatory relief. Dkt. 88 at 43-44. We consider whether Plaintiffs have shown a substantial likelihood that this relief would redress their alleged vote-dilution and funding-loss injuries.[6] In other words, is it substantially likely that a declaration that Defendants had unlawfully produced the 2020 Census's total population count and redistricting files would remedy Plaintiffs' alleged injuries in fact? Or is it substantially likely that requiring Defendants to publish and send to the President corrected apportionment and redistricting data would do so?

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6. We discuss the redressability of Representative Donalds's alleged informational injury below.

For two reasons, we find that Plaintiffs have not carried their burden. First, the entitlement certificate revision remedy[7] outlined in *Utah v. Evans*, 536 U.S. 452, 122 S. Ct. 2191, 153 L. Ed. 2d 453 (2002), is not appropriate in the markedly different circumstances of this case. Second, Plaintiffs have not shown a substantial likelihood that a favorable judgment would cause absent third parties—"independent actors not before th[is] [C]ourt[]," *Lujan*, 504 U.S. at 562—to take actions that remedy these injuries.

After discussing these two points, we address Plaintiffs' unpersuasive attempt to reframe their injuries as procedural harms that enjoy a more relaxed redressability standard.

i. *Utah v. Evans* relief is impracticable

Defendants concede, and we acknowledge, that Section 209 does not bar postcensus lawsuits. *See* Dkt. 97 at 13 (citing *Evans*, 536 U.S. at 462). In *Utah v. Evans*, the

7. An "entitlement certificate" is the process by which the House of Representatives informs each State of the number of Representatives to which it is entitled after a decennial census. Under 13 U.S.C. § 141(b), the decennial census is "reported by the Secretary to the President." The President then sends "Congress a statement showing the whole number of persons in each State" and "the number of Representatives to which each State would be entitled . . . ." 2 U.S.C. § 2a(a). The House must then send each State "a certificate of the number of Representatives to which such State is entitled . . . ." *Id.* § 2a(b).

Supreme Court emphasized that Section 209 "does not say that it bars postcensus lawsuits," and that "if a lawsuit is brought soon enough after completion of the census and heard quickly enough," relief is not "necessarily impracticable." 536 U.S. at 463 (internal quotations omitted). As such, the redressability requirement may be satisfied by a plaintiff who quickly challenges the census results and could obtain "ultimate relief" by way of "an injunction requiring[] the Secretary to substitute a new [census] 'report' for the old one." *Id.* "Should the new report contain a different conclusion about the relative populations of [the States], the relevant calculations and consequent apportionment-related steps would be purely mechanical; and several months would remain prior to the first post-2000 census congressional election." *Id.* As to the actions of any independent third parties, the Supreme Court further commented that, in the circumstances of *Evans*, "it would seem . . . 'substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision[.]'" *Id.* at 464 (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 803, 112 S. Ct. 2767, 120 L. Ed. 2d 636 (1992)).

However, as Defendants correctly point out, this case is in a vastly different posture than *Evans*. Unlike in *Evans*, where the 2000 Census data had recently been released, no new Representatives had been selected, and several months remained before the first post-2000 Census congressional election, *id.* at 461-63, this action challenges the 2020 Census nearly five years after its completion. In those intervening years, 44 states have redrawn their congressional districts (some, like Florida, more than once), all 50 states have redrawn state and local districts, two federal elections have been held (with another this year), and new Representatives have been elected based on the new districts.[8] The *Evans* Court recognized that relief from a post-census challenge seeking a revised entitlement certificate is not "necessarily impracticable" in a situation where a lawsuit is "brought soon enough after completion of the census," and "before new Representatives are actually selected," *id.* at 462-63, but none of those circumstances are present here, given the more-than-four-year delay in filing suit and the substantial changes in Representatives following two federal elections and ongoing nationwide redistricting. *See also Dep't of Com. v. U.S. House of Representatives*, 525 U.S. 316, 332 (1999), 119 S. Ct. 765, 142 L. Ed. 2d 797 (recognizing that a postcensus challenge could "result in extreme—possibly irremediable—hardship"). In short, Plaintiffs cannot point to *Evans* to show that relief that depends on a corrected entitlement certificate would not be "impracticable," given the current circumstances. 536 U.S. at 463.

This conclusion is neither novel nor groundbreaking, as Congress understood this problem as well. Section 209 plainly states that "the decennial enumeration of the population is a complex and vast undertaking, and . . . it would be *impracticable* for the States to obtain, and the courts of the United States to provide, meaningful

8. Many states are also undergoing current and ongoing redistricting efforts following the Supreme Court's decision in *Louisiana v. Callais*, 146 S. Ct. 1131, 224 L. Ed. 2d 604 (2026).

relief *after* such enumeration has been conducted." Pub. L. No. 105-119, § 209(a)(8) (emphasis added). Due to this impracticality concern, and understanding the need for expediency, Congress mandated that a "district court hearing an action brought under this section" has a duty to "expedite to the greatest possible extent the disposition of" the case. *Id.* § 209(e)(2). Congress then permitted any final order or injunction to be directly appealable to the Supreme Court. *Id.* § 209(e)(1).

Along the same vein, during the 2000 Census, Congress even compelled the Bureau to issue a "comprehensive and detailed plan outlining [the Bureau's] proposed methodologies for conducting the 2000 Decennial Census and available methods to conduct an actual enumeration of the population." *Dep't of Com.*, 525 U.S. at 326 (quoting 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those in Bosnia, tit. VIII, 111 Stat. 158, 217). Following the release of the 2000 Census Report and operational plan, Congress passed Section 209 on November 26, 1997, which deemed "the report . . . and the Census 2000 Operational Plan" to be a "final agency action" that was immediately "reviewable in a judicial proceeding." Pub. L. No. 105-119, § 209(c)(2).[9] Essentially, Congress indicated that any challenge to the

9. Plaintiffs latch onto the "final agency action" language to argue that Section 209 claims can be brought under the APA. Dkt. 103 at 28. As discussed in greater detail below, this language did not transform every single Section 209 claim into some hybrid APA claim. Section 209 is an independent cause of action, independent of the APA.

Bureau's statistical methods for any decennial census should be made either before or soon after the census is complete, as "it would be impracticable for . . . the courts of the United States to provide[] meaningful relief after such enumeration has been conducted." *Id.* § 209(a)(8).

Nor do Plaintiffs seek to correct "a clerical, a mathematical, or a calculation error[] in census data" that requires only a "mechanical revision" to apportionment. *Evans*, 536 U.S. at 462. To the extent that Plaintiffs request mandatory relief compelling Defendants to use "direct contact" to "account for" 18.8 million people Plaintiffs allege weren't directly enumerated in the 2020 Census, Dkt. 88 ¶¶ 190, 195, 203, 209, 217[10]—this would not "translate[] mechanically into a new apportionment of Representatives without further need for exercise of policy judgment." *Evans*, 536 U.S. at 462. Instead, the Bureau would need to make policy judgments about how it would attempt to contact directly the 18.8 million people it allegedly was unable to reach six years ago.

10. In their prayer for relief, Plaintiffs request only that the court issue mandatory relief requiring Defendants to send to the President and publish new data "that excludes population data that was substituted with results derived primarily from statistical methods," with no mention of mandating an attempt to count millions of people anew. Dkt. 88 at 43-44. That relief would pose yet another redressability problem. As we've mentioned and we discuss further below, Plaintiffs cite *Estimates for People in the United States by State*, which states that Florida's whole-person imputation rate was 3.6%, while the nationwide rate was 3.4%. Excluding whole-person imputation data would thus seem to *increase* any undercount of Florida relative to the rest of the country, which would not redress Plaintiffs' alleged injuries.

Even assuming the requested correction to the 2020 Census data is clerical or mathematical in nature (without the need for policy judgments), the timing of this suit makes *Evans* inapplicable in another way. The *Evans* Court reasoned that relief was practicable and correcting any error "makes good sense," when an error is discovered "before new Representatives are actually selected." 536 U.S. at 462. But again, millions of voters have already elected Representatives that were apportioned according to the 2020 Census in the 2022 and 2024 election cycles, well before Plaintiffs filed suit here. Although we do not hold that relief is always impracticable after a first election conducted using a new census's apportionment, this is yet another distinction from *Evans*.

Plaintiffs have not shown that their requested mandatory relief (i.e., sending new apportionment data to the President and publishing a corrected redistricting dataset) fits inside *Evans*' presumption that an amended entitlement certificate would likely follow. The disruptiveness of the remedy sought—which would affect congressional delegations in multiple states, not just Florida—makes it impracticable.[11]

11. To put a finer point on it, assuming the Court rules for Plaintiffs and the Supreme Court affirms, the Court would be ordering Defendants—in 2026 or 2027 at the earliest—to find and directly contact 18.8 million people whom the Bureau could not find in 2020 and who may live in different places now, regardless. This remedy seems exceedingly impracticable, if not impossible, since the Bureau has to find those who were imputed as unfindable in 2020, about seven years later.

ii. Absent third parties

The impracticability concerns regarding Plaintiffs' requested relief are exacerbated because redress requires action by absent third parties. Plaintiffs have not satisfied their burden to show a substantial likelihood that judgment against Defendants would lead to redress of Plaintiffs' alleged vote-dilution and funding-loss injuries. *See Steel Co.*, 523 U.S. at 107 ("Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement.").

As discussed above, "it must be the effect of the court's judgment on the defendant—not an absent third party—that redresses the plaintiff's injury, whether directly or indirectly." *Lewis*, 944 F.3d at 1301 (citation modified). That means the relief sought must "affec[t] the behavior of the defendant towards the plaintiff." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291, 141 S. Ct. 792, 209 L. Ed. 2d 94 (2021) (citations omitted). The Supreme Court has already noted that "[t]he President and other executive and congressional officials . . . would not be directly bound by . . . a determination" ordering mandatory relief. *Franklin*, 505 U.S. at 803 (plurality opinion).

Start with Plaintiffs' asserted vote-dilution injury. Even if we assume that Congress would not have to enact a new law to effectuate a remedy, *compare Evans*, 536 U.S. at 461-62, *with id.* at 512-13 (Scalia, J., dissenting), redress for Plaintiffs' injury requires action by the President. Any recalculation of the 2020 Census's total population by state will not redress any injury "unless the President accepts the new numbers, changes his calculations accordingly, and issues a new reapportionment statement to Congress." *Franklin*, 505 U.S. at 824 (1992) (Scalia, J., concurring in part). This Court, of course, is generally powerless "to enjoin the President in the performance of his official duties." *Id.* at 803 (plurality opinion) (quoting *State of Mississippi v. Johnson*, 71 U.S. 475, 501, 18 L. Ed. 437 (1866)). And Plaintiffs have not carried their burden to show that the President would be "substantially likely" to respond to new census data by effectuating a new apportionment so late in the decennial process. *Evans*, 536 U.S. at 464 (quoting *Franklin*, 505 U.S. at 803). Plaintiffs cite a single social media post from August 2025, in which the President said he had instructed the Department of Commerce to "work on a new and highly accurate CENSUS based on modern day facts and figures," using information gained in 2024. Dkt. 88 ¶ 140. This vague, off-point statement falls short of showing a "substantial likelihood," *Stevens*, 529 U.S. at 771 (quoting *Simon*, 426 U.S. at 45), that the President would do something entirely different—accept new, retrospective 2020 Census data from Defendants and send a new apportionment statement to Congress, *see* 2 U.S.C. § 2a(a). Plaintiffs make no allegations that he would. We cannot presume without factual support that a President would impose a massively disruptive burden on multiple states.[12]

12. Plaintiffs don't ask us to assume that the President would act out of an interest in partisan gain rather than concerns for accuracy and administrative feasibility. Even if they had, that argument would rely on pure speculation about which states would stand to gain or lose seats in Congress—and the partisan effects

To be clear, the *Evans* Court found an entitlement certificate revision "would bring about the ultimate relief that [the plaintiff] seeks" because it was "substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision." *Id.* at 463-64 (quoting *Franklin*, 505 U.S. at 803). This finding, however, was based on circumstances where the 2000 Census had recently been released, no new Representatives had been selected, and "several months . . . remain[ed] prior to the first post-2000 census congressional election." *Id.* at 463. As discussed above, the timing and circumstances of this case are vastly different from those in *Evans*. In contrast to *Evans*, the four-year delay in filing suit means Plaintiffs' theory of redressability hinges on a "speculative chain of possibilities." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414, 133 S. Ct. 1138, 185 L. Ed. 2d 264 (2013).

Plaintiffs' funding-related injury suffers from a similar redressability problem. The Complaint alleges that more than 350 federal programs determine funding allocations "based on census population totals." Dkt. 88 ¶ 148. But Plaintiffs don't allege that any of the entities that manage those programs would likely update their

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of those gains or losses. The only data source Plaintiffs point to is the 2020 Census's list of "priority values" for each state—the entirety of which Plaintiffs allege was "wrong." Dkt. 88 ¶ 118. One cannot establish redressability by speculating about a possible chain of events. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344, 126 S. Ct. 1854, 164 L. Ed. 2d 589 (2006); *Berrocal v. Att'y Gen. of U.S.*, 136 F.4th 1043, 1051 (11th Cir. 2025) funding formulas in response to a judgment from this Court and resulting release of new data from the Census Bureau.[13] So with funding loss, too, Plaintiffs fail to allege that absent third parties would be substantially likely to redress their injury if we granted relief.[14]

There's one more redressability problem with both the alleged vote-dilution and funding-loss injuries.

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13. Notably, as stated in a document Plaintiffs' Complaint cites, the "Census Bureau itself does not distribute any federal funds, nor determine the amount or allocation of federal funding for any program, nor does the Census Bureau determine how data are used by federal programs or in any particular funding formulas." Ceci Villa Ross, U.S. Dep't of Commerce, U.S. Census Bureau, *Uses of Decennial Census, Programs Data in Federal Funds Distribution: Fiscal Year 2021*, at 41 (2023), https://www2.census.gov/library/working-papers/2023/decennial/census-data-federal-funds-fy-2021.pdf [https://perma.cc/62GT-5J67]. Plaintiffs do not request relief binding the U.S. Department of Commerce with respect to any federal funding programs it administers, either.

14. Although the issue wasn't briefed, we also don't see how Plaintiffs have shown that reduced funding is an invasion of a legally protected interest that is particularized as to them—part of the injury-in-fact requirement. *Lewis*, 944 F.3d at 1296. "For an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way[,]' rather than being a generalized grievance. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016) (quoting *Lujan*, 504 U.S. at 560). But even for the one specific funding program Plaintiffs discuss in the Complaint—highway funding, Dkt. 88 ¶¶ 150-51—they did not allege how a loss in highway funding affected them in a personal and individual way. So Plaintiffs' allegations about loss of federal funding do not show an injury-in-fact.

The statistical method cited in the Complaint as being excessively used is whole-person imputation. *Id.* ¶¶ 78-81, 137. However, the data cited in the Complaint show that it is entirely speculative whether the imputation employed in the census for Florida increased or decreased the Florida head count relative to other States. For example, Plaintiffs cite *Estimates for People in the United States by State*, which states that Florida's whole-person imputation rate was 3.6%, while the nationwide rate was 3.4%. *See Estimates for People in the United States by State* at 15, 17. Of the 11 states with a whole-person imputation rate of 3.6% or higher, two had an undercount (Florida and Illinois), and three had an overcount (New York, Rhode Island, and Utah). *See id.* at 17-18. Of course, undoing a process that increased Florida's relative population would not redress Plaintiffs' alleged vote-dilution injury or any funding loss tied to relative population.

Perhaps some federal funding programs rely on absolute rather than relative population. But here the problem is even more stark. As Plaintiffs concede, imputing individuals who are missing after Defendants attempt other methods of contact increases the absolute population count compared to using a figure of "zero" for them. Dkt. 103 at 11-12 & n.1. A new data set that "excludes population data" supplemented with whole-person imputation, Dkt. 88 at 43-44, could only lower Florida's absolute population. Doing so could not mitigate a funding-loss injury from any program that distributes funds based on absolute population.

As such, it is (at best) pure speculation to assume the requested remedy of reducing whole-person imputation will resolve Plaintiffs' alleged vote-dilution or funding-loss injuries, as there is no indication that whole-person imputation is the cause of any undercount in Florida. An equally plausible argument could be made that Florida's count should have been subject to more whole-person imputation due to the demographics of Florida's residents in 2020.

At bottom, at this late date in the decennial cycle, any persuasive effect a judicial order from this Court might have upon the President or executive branch officials, as absent nonparties who are not under Defendants' control, cannot suffice to establish redressability. *See Lewis*, 944 F.3d at 1305 ("If courts may simply assume that everyone (including those who are not proper parties to an action) will honor the legal rationales that underlie their decrees, then redressability will always exist." (quoting *Franklin*, 505 U.S. at 825 (Scalia, J., concurring in part and concurring in the judgment))). "Redressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power." *Id.*; *see also Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1255 (11th Cir. 2020). We therefore dismiss this action for lack of Article III standing.

iii. Procedural harms

Plaintiffs resist this conclusion by raising a new standing argument. In an attempt to sidestep these redressability issues, Plaintiffs reframe their alleged injuries as "procedural harm[s]" that can survive under a more relaxed redressability standard for procedural rights cases. Dkt. 103 at 15-16 (citing *Ctr. for a Sustainable Coast v. U.S. Army Corps of Eng'rs*, 100 F.4th 1349, 1353 (11th Cir. 2024)). We are not persuaded for one fatal reason—there are no allegations that Defendants violated any procedural rights, rules, or regulations. As mentioned above, the section of the Complaint listing Plaintiffs' injuries is clear—the Florida Plaintiffs allege voter dilution due to the loss of representation in Congress, Dkt. 88 ¶¶ 143-47, and the loss of funding for federal programs based on inaccurate census population totals, *id.* ¶¶ 148-76. Representative Donalds also asserts an informational injury based on his reliance on inaccurate census data. *Id.* ¶¶ 177-84. Absent is a single allegation that Defendants' actions violated Plaintiffs' procedural rights.

Moreover, the contrast between these Plaintiffs and the plaintiffs in *Sustainable Coast* is clear. In *Sustainable Coast*, the plaintiffs sued the U.S. Army Corps of Engineers for failure to comply with the National Environmental Policy Act's ("NEPA") "rigorous approval process for any 'major' projects, including both a formal environmental review and public notice and comment." 100 F.4th at 1354 (citing 33 C.F.R. § 325 app. B at 6a, 7a (2022)). The plaintiffs' aesthetic injury was based on the Army Corps' decision to "issue[] a letter of permission approving [a] proposed 500-square-foot dock—along with a gangway, pier head, and 200-foot walkway," which "allowed the Corps . . . to avoid NEPA's ordinary approval process." *Id.* The Eleventh Circuit ultimately reversed the district court's dismissal for lack of standing, reasoning that:

> [W]hen "a litigant is vested with a procedural right, that litigant has standing if there is *some possibility* that the requested relief will prompt the injury-causing party to reconsider the decision that allegedly harmed the litigant." *Cahaba Riverkeeper v. EPA*, 938 F.3d 1157, 1162 (11th Cir. 2019) (emphasis added) (quotation omitted). And that makes sense; if certainty about future administrative outcomes was needed to show standing, citizen-suit provisions "would be a dead letter." *Sugar Cane Growers Co-Op of Florida v. Veneman*, 289 F.3d 89, 95, 351 U.S. App. D.C. 214 (D.C. Cir. 2002).
>
> Those principles decide this case. The procedural injury here is the Corps's failure to comply with NEPA, and "that injury is plainly redressable." *Ouachita Watch League*, 463 F.3d at 1173. In fact, redressability in circumstances like these is ordinarily seen as so obvious that we have dispatched with it in just a few sentences. *See id.* at 1173; *Cahaba Riverkeeper*, 938 F.3d at 1163. Here, the district court could vacate the letter of permission through a court order, remand to the Corps for new proceedings under NEPA, or both. Each of those options would redress the Center's procedural injury.

Id. at 1357.

Unlike the plaintiffs in *Sustainable Coast*, we cannot glean a single allegation that demonstrates Plaintiffs suffered procedural harm when Defendants used whole-person imputation in the 2020 Census. Neither the Complaint nor Plaintiffs' response to the motions to dismiss directs the Court's attention to any statute, rule, or regulation that the Bureau circumvented, ignored, or abused when conducting the 2020 Census. To be sure, Plaintiffs make plenty of allegations that the 2020 Census used unlawful statistical methods in violation of the Constitution's "actual Enumeration" Clause and 13 U.S.C. § 141(a). *See* Dkt. 88 ¶¶ 5, 8, 186-95. But 13 U.S.C. § 141(a) enables the Secretary to conduct the census "in such form and content as he may determine, including the use of sampling procedures and special surveys. . . . authorized to obtain such other census information as necessary." 13 U.S.C. § 141(a). And the Supreme Court has previously found that Defendants' use of imputation in the decennial census is constitutional. *See Evans*, 536 U.S. at 478-79.

Contrary to Plaintiffs' claim that "failing to reach every household" is a procedural harm, Dkt. 103 at 18, any alleged failure to comply with the Enumeration Clause or 13 U.S.C. § 141 is a constitutional violation that can be brought under Section 209—Congress's statutorily created cause of action for challenging an unconstitutional statistical method. *See* Pub. L. No. 105-119, § 209(b) ("Any person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law (other than this Act), in connection with the 2000 or any later decennial census . . . may in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method."). A Section 209 claim is not a "procedural right" violation.

To the extent Plaintiff argues their procedural harm is based on "the Census Bureau suspend[ing] normal procedures and employ[ing] new data collection and processing methodologies" during the COVID-19 pandemic, Dkt. 88 ¶ 49, such an argument is without merit. We need not accept as true this "legal conclusion[] masquerading as fact[,]" *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002), because Plaintiffs (again) fail to allege what statute,[15] regulation, or administrative procedure was violated when the Bureau adjusted its operational plan in response to the COVID-19 pandemic. *See* Dkt. 88 ¶¶ 50-62. Again, the crux of the Complaint centers on the alleged "actual Enumeration" Clause violation arising from the increased use of imputation, not on any procedural injury. *See id.* ¶¶ 88, 96, 187-88.

Finally, perhaps the most telling evidence that Plaintiffs are not bringing a procedural rights case is the type of remedy they seek from the Court. As *Sustainable Coast* made clear, the plaintiffs alleged "a *procedural injury* connected to the protection of that aesthetic interest: the Corps's failure to conduct [a] full NEPA

15. *See* 13 U.S.C. § 141(a) ("The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the 'decennial census date,' in such form and content as he may determine[.]"). Beyond conclusory assertions that Defendants abused their authority, Dkt. 88 ¶ 10, Plaintiffs fail to articulate which part of 13 U.S.C. § 141(a) was violated, thereby causing *procedural* harm that could be remedied by providing process. *See Sustainable Coast*, 100 F.4th at 1357 n.7.

review. . . . a court could remedy the [plaintiffs'] procedural harm—by requiring process." 100 F.4th at 1357 n.7. In contrast, Plaintiffs request declaratory and mandatory relief, Dkt. 88 at 43-44, and do not ask Defendants to follow any procedural process that was previously ignored or circumvented. Instead, the requested relief asks this Court to remedy the alleged constitutional violations that occurred during the 2020 Census by ordering Defendants to engage in "direct contact" to recalculate the final nationwide count. Dkt. 88 ¶¶ 190, 195, 203, 209, 217. Put simply, the alleged injuries in this case look nothing like the typical procedural rights case. *See, e.g.*, *Lujan*, 504 U.S. at 572 n.7 (hypothetical plaintiff would have standing to challenge failure to prepare an environmental impact statement); *Sierra Club v. Johnson*, 436 F.3d 1269, 1275, 1278-79 (11th Cir. 2006) (standing to challenge existing permit for insufficient public notice and comment). Plaintiffs have not identified, and we cannot find, any "different procedural inputs would lead to a different substantive outcome" in order to satisfy standing in a procedural rights case. *Sustainable Coast*, 100 F.4th at 1357-58. Nor have Plaintiffs alleged what concrete interest is being "remedied by process." *Id.* at 1359 ("A procedural violation is remedied by process, and so long as that process protects a concrete interest, the plaintiff has shown redressability."). Therefore, because Plaintiffs failed to satisfy the redressability requirement, we dismiss this action for lack of Article III standing.

2. Rep. Donalds's Alleged Informational Injury

Finally, Representative Donalds's alleged informational injury is not cognizable as an injury in fact. Even if it were, Plaintiffs haven't shown that judicial relief would redress the injury they allege. To allege a concrete informational injury in fact, a plaintiff must identify "downstream consequences" from receiving incorrect information. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 442, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021) (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1004 (11th Cir. 2020)). "An 'asserted informational injury that causes no adverse effects cannot satisfy Article III.'" *Id.* (quoting *Trichell*, 964 F.3d at 1004).

Plaintiffs state that Representative Donalds "uses census data to inform his votes" and "depends on accurate census data to inform his constituent services and relations." Dkt. ¶¶ 178, 181. But it's not enough to note vaguely that Representative Donalds "cast votes concerning the HUBZone small business program," a program that uses census data to set its eligibility requirements. Dkt. ¶ 179. Plaintiffs don't identify a single vote that Representative Donalds would have cast differently if he had access to different census data. And it was Plaintiffs' burden to show that the allegedly incorrect data adversely affected Representative Donalds. A plaintiff who "neither took nor failed to take *any action* because of [incorrect] statements" lacks an injury in fact. *Frank v. Autovest, LLC*, 961 F.3d 1185, 1188, 447 U.S. App. D.C. 197 (D.C. Cir. 2020).

Plaintiffs' allegations about constituent services are faulty, as well. Plaintiffs allege that Representative Donalds advises his constituents about programs such as SNAP and Medicare, which set eligibility requirements using census data. Dkt. 88 ¶ 182. But Representative Donalds operated from the same set of census data that the administrators of programs like SNAP and Medicare use. So Plaintiffs don't explain how Representative Donalds was stymied in advising his constituents on how to navigate those programs.

Representative Donalds's informational injuries are not cognizable for another reason. "Logically, 'a prospective remedy will provide no relief for an injury that is, and likely will remain, entirely in the past.'" *Church v. City of Huntsville*, 30 F.3d 1332, 1337 (11th Cir. 1994) (quoting *Am. Postal Workers Union v. Frank*, 968 F.2d 1373, 1376 (1st Cir. 1992)). But Representative Donalds has not asserted a future injury in fact that could be redressed with prospective relief like the declaratory and mandatory relief that Plaintiffs request. *See Cambridge Christian Sch., Inc. v. Fla. High Sch. Athletic Ass'n, Inc.*, 115 F.4th 1266, 1281 (11th Cir. 2024). Indeed, the Complaint contains no allegations of any future votes or constituent actions that would require Representative Donalds to possess "accurate" census data. *See* Dkt. 88 ¶¶ 177-84. This gap is particularly notable because Representative Donalds, a candidate for Governor of Florida, has not announced if he will be running for reelection to Congress in November 2026. It is far from clear that Defendants could issue any new data before that date, especially if we ordered them to "account for the 18.8 million omissions by means of direct contact," an enormous undertaking. Dkt. 88 ¶ 195.

For both of these reasons, Plaintiffs haven't established an informational injury-in-fact that is judicially redressable.

B. Section 209 and the APA

Because the Court found that Plaintiffs lack standing to bring this action, we need go no further. Nevertheless, even if we set aside the redressability faults and assume Plaintiffs had Article III standing, the Court would still dismiss all of Plaintiffs' claims for two reasons.[16] First, Plaintiffs cannot claim that Counts III—V are some sort of hybrid APA and Section 209 claim.[17] Second, the four-year statute of limitations under 28 U.S.C. § 1658(a) continues to bar Plaintiffs' Section 209 claims in Counts I and II.

1. Do Plaintiffs have hybrid Section 209 and APA claims?

We begin with whether, on these peculiar facts, a Section 209 claim can be a hybrid APA claim. Faced with

16. We discuss these problems, even though the court lacks jurisdiction over this case as a result of Plaintiffs' lack of standing, because these merits problems, in the fourth section of this order, help show the futility of amendment.

17. Plaintiffs characterize Counts III—V as APA claims since 28 U.S.C. § 2401(a)'s six-year statute of limitations applies to APA claims. *See U.S. Steel Corp. v. Astrue*, 495 F.3d 1272, 1280 (11th Cir. 2007). This longer statute of limitations would, if applicable, avoid the timeliness issue previously addressed in the Court's prior dismissal order. *See* Dkt. 84 at 13 (dismissing the prior complaint as time-barred under 28 U.S.C. § 1658(a)'s four-year statute of limitations).

the prior ruling that their claims are untimely under 28 U.S.C. § 1658(a), Plaintiffs bring Counts III—V expressly as APA claims. They bring Counts I and II under Section 209, but add the caveat that "claims under Pub. L. No. 105-119, § 209 are a form of special statutory review proceeding under 5 U.S.C. § 703 and are therefore APA claims." Dkt. 88 at 39 n.5. The Intervenors push back, contending that Section 209 is actually a bar to any APA claims since the APA is only available if "there is no other adequate remedy in a court." Dkt. 96 at 11 (quoting 5 U.S.C. § 704). We agree with Intervenors. Counts III—V are duplicative of Section 209 claims. For that reason, Section 209's "special statutory review proceeding" and "other adequate remedy" prevent Plaintiffs from repackaging their claims under the APA. 5 U.S.C. §§ 703-704. Plaintiffs cannot forcibly meld the two statutes together in an effort to claim a longer statute of limitations applies.

It has long been established that the APA provides authorization of judicial review for cases in which "review [of agency action] is sought not pursuant to specific authorization in the substantive statute." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 882, 110 S. Ct. 3177, 111 L. Ed. 2d 695 (1990). Specifically, the APA provides:

> The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas

> corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

5 U.S.C. § 703. "Thus, the APA does not provide an independent basis for judicial review where such judicial review is already provided for by a different statutory provision." *Harris v. Dep't of Homeland Sec.*, 18 F. Supp. 3d 1349, 1359 (S.D. Fla. 2014) (citing *Hamby v. Janer*, 808 F.2d 1433, 1434 n.4 (11th Cir. 1987)); *see also Jory v. United States*, 562 F. App'x 926, 928 (11th Cir. 2014) ("The APA delineates that where the form of proceeding for judicial review is provided for by 'the special statutory review proceeding relevant to the subject matter'—as it is provided for here—the APA does not provide any alternative forms of review." (quoting 5 U.S.C. § 703)).

Similarly, 5 U.S.C. § 704 further states that "[a]gency action made reviewable by statute and final agency action for which there is *no other adequate remedy* in a court are subject to judicial review." 5 U.S.C. § 704 (emphasis added). When discussing this section, the Supreme Court has explained:

> [A]lthough the primary thrust of § 704 was to codify the exhaustion requirement, the

> provision as enacted also makes it clear that Congress did not intend the general grant of review in the APA to duplicate existing procedures for review of agency action. As Attorney General Clark put it the following year, § 704 "does not provide additional judicial remedies in situations where the Congress has provided special and adequate review procedures." At the time the APA was enacted, a number of statutes creating administrative agencies defined the specific procedures to be followed in reviewing a particular agency's action; for example, Federal Trade Commission and National Labor Relations Board orders were directly reviewable in the regional courts of appeals, and Interstate Commerce Commission orders were subject to review in specially constituted three-judge district courts.

Bowen v. Massachusetts, 487 U.S. 879, 903, 108 S. Ct. 2722, 101 L. Ed. 2d 749 (1988). In other words, "[w]hen Congress enacted the APA to provide a general authorization for review of agency action in the district courts, it did not intend that general grant of jurisdiction to duplicate . . . established special statutory procedures relating to specific agencies." *Id.* The Supreme Court has reaffirmed this principle concerning 5 U.S.C. § 704, noting "Congress intended by that provision simply to avoid duplicating previously established special statutory procedures for review of agency actions." *Darby v. Cisneros*, 509 U.S. 137, 146, 113 S. Ct. 2539, 125 L. Ed. 2d 113 (1993); *see also*

U.S. Army Corps of Eng'rs v. Hawkes Co., 578 U.S. 590, 600 (2016), 136 S. Ct. 1807, 195 L. Ed. 2d 77 ("[A]n agency action is reviewable under the APA only if there are no adequate alternatives to APA review in court." (citing 5 U.S.C. § 704)).

Here, Section 209 is the kind of "'special and adequate review procedure' that will oust [this] [C]ourt of its normal jurisdiction under the APA." *Bowen*, 487 U.S. at 904. Plaintiffs seemingly agree with this conclusion by stating that Section 209 is a "special statutory review proceeding," but then confusingly argue "Section 209 is not a freestanding remedial scheme separate from the APA." Dkt. 103 at 28; *see also id.* at 19. Plaintiffs suggest that if a statute constitutes a "special statutory review proceeding," then it is *not barred* under the APA; instead, the APA somehow becomes the "broader substantive framework under which agency action . . . is reviewed." *Id.* at 31. This position appears contrary to what "special statutory review proceeding" and "no other adequate remedy" mean under 5 U.S.C. §§ 703 and 704.

First, the plain and unambiguous text of 5 U.S.C. § 703 states that "[t]he form of proceeding for judicial review is the *special statutory review proceeding relevant to the subject matter in a court specified by statute*." 5 U.S.C. § 703 (emphasis added). In this case, Section 209 is the relevant subject matter statute—that is, it provides a cause of action when challenging a "statistical method" that violates "the Constitution or any provision of law." Pub. L. No. 105-119, § 209(b). We also know Section 209 contains a special statutory review proceeding since

Congress mandated several special procedures: "[a]ny person aggrieved by the use of any statistical method" can sue for only "declaratory [and] injunctive" relief, *id.* § 209(b); the action can be heard only by "a district court of three judges" under 28 U.S.C. § 2284, *id.* § 209(e)(1); all actions involving Section 209 in one circuit must be consolidated, *id.* § 209(e)(1); "[a]ny final order or injunction . . . that is issued . . . shall be reviewable by appeal directly to the Supreme Court of the United States," *id.* § 209(e)(1); a notice of appeal for any final order must be "filed within 10 days," and the jurisdictional statement must be "filed within 30 days" after the final order is issued, *id.* § 209(e)(1); "[n]o stay of an order issued pursuant to an action brought under this section may be issued by a single Justice of the Supreme Court," *id.* § 209(e)(1); and the district court and the Supreme Court have a duty to "expedite to the greatest possible extent the disposition" of Section 209 claims, *id.* § 209(e)(2).

In view of the foregoing, we are satisfied that Section 209 establishes a special statutory review proceeding by providing an expedited path for judicial review. Contrary to Plaintiffs' belief, the APA will apply only "[i]f no special statutory review proceeding is applicable," 5 U.S.C. § 703, and Section 209 clearly provides the form of review that Plaintiffs seek when challenging Defendants' use of imputation in the 2020 Census. As such, "where the form of proceeding for judicial review is provided for by 'the special statutory review proceeding relevant to the subject matter'—as it is provided for here [by Section 209]—the APA does not provide any alternative forms of review." *Jory*, 562 F. App'x at 928.

Second, the text of 5 U.S.C. § 704 supports this conclusion. This section says that "[a]gency action made reviewable by statute and final agency action for which there is *no other adequate remedy in a court* are subject to judicial review." 5 U.S.C. § 704 (emphasis added). This means 5 U.S.C. § 704 "does not provide additional judicial remedies in situations where . . . Congress has provided special and adequate review procedures." *Bowen*, 487 U.S. at 903. Here, Section 209 provides the "other adequate remedy" that Plaintiffs seek when challenging the Bureau's increased use of imputation during the 2020 Census. Again, we know that Section 209 provides a "special and adequate review procedure" since it mirrors the examples identified in *Bowen*—any final order or injunction can be immediately appealed to the Supreme Court, Pub. L. No. 105-119, § 209(e)(1), and Section 209 claims can be heard only by "a district court of three judges" under 28 U.S.C. § 2284, *id.* § 209(e)(1). *See Bowen*, 487 U.S. at 903 ("[F]or example, Federal Trade Commission and National Labor Relations Board orders were directly reviewable in the regional courts of appeals, and Interstate Commerce Commission orders were subject to review in specially constituted three-judge district courts.").

In light of Congress's intent to provide a special review procedure for legal challenges to the decennial census, permitting Plaintiffs' APA claims in Counts III—V would provide a duplicative remedy, in contravention of the APA's text. This Court may not authorize an end-run around Section 209's statutorily created process. Thus, we find that Counts III—V should be dismissed because Section 209 already establishes a special statutory review process and adequate alternative remedy for allegedly unlawful use of statistical methods in connection with the decennial census.[18]

To be clear, we are not holding that Section 209 claims expressly preclude APA review of all actions by Defendants. Indeed, there is a long history of cases challenging the Bureau's (*non-statistical method*) census decisions under the APA. *See Nat'l Ass'n for Advancement of Colored People v. Bureau of Census*, 382 F. Supp. 3d 349, 365-66 (D. Md. 2019) (collecting cases on trial courts that have "vigorously . . . rejected arguments that they are powerless to review decisions of the Secretary regarding the conduct of the census"); *Dep't of Com. v. New York*, 588 U.S. 752, 763-64, 139 S. Ct. 2551, 204 L. Ed. 2d 978 (2019) (bringing an APA challenge to the Secretary of Commerce's decision to add a citizenship question to the 2020 Census questionnaire).

Section 209 provides a separate and distinct cause of action that is different from an APA challenge, *see, e.g.*,

18. Plaintiffs argue that Count V does not overlap with Section 209 because it challenges the explanation Defendants gave for "departing so dramatically from prior census practice" rather than challenging the use of "statistical methods" per se. Dkt. 103 at 30. But Count V challenges the reasoning for Defendants' use of imputation, which Plaintiffs argue is "by definition a statistical method" within the meaning of Section 209. Dkt. 88 ¶ 71. We read Section 209 to permit a suit on that theory. We don't see why the statute's cause of action for "[a]ny person aggrieved by the use of any statistical method in violation of . . . *any provision of law*," would carve out violations of the APA's procedural requirements. Pub. L. No. 105-119, § 209(b) (emphasis added).

Ala. v. U.S. Dep't of Com., 546 F. Supp. 3d 1057, 1067, 1072 (M.D. Ala. 2021) (differentiating between Section 209 claims and APA claims); *Nat'l Urb. League v. Ross*, 508 F. Supp. 3d 663, 696 (N.D. Cal. 2020) (noting a distinction between the plaintiffs' "APA claims" and "Enumeration Clause claim"), and Counts III—V are clearly duplicative of the Section 209 claims in Counts I and II, as all counts challenge the statistical methods used during the 2020 Census. Indeed, Plaintiffs characterize Counts III—V as APA claims, but then expressly allege these counts are "cognizable under [S]ection 209," claim to be "aggrieved" persons within the meaning of Section 209, invoke the provision's three-judge panel requirement, and repeatedly emphasize the "extensive use of statistical methods" and "reliance upon imputation" as violations of the "actual Enumeration" Clause and 13 U.S.C. § 141. Dkt. 88 ¶¶ 3, 5, 7, 8, 25, 119, 136, 196, 198-200, 204, 206-08, 210, 213, 215-16. Plaintiffs cannot invoke the many features of Section 209 in Counts III—V, while simultaneously claiming that these counts are brought under the APA. Therefore, because Counts III—V are duplicative Section 209 claims, Plaintiffs may not assert them under the APA.

However, one more issue remains. In an attempt to justify their untenable position, Plaintiffs point to Section 209's statement that "the Census 2000 Operational Plan shall be deemed to constitute final agency action regarding the use of statistical methods in the 2000 decennial census, thus making the question of their use in such census sufficiently concrete and final to now be reviewable in a judicial proceeding." Pub. L. No. 105-119, § 209(c)(2). Plaintiffs argue the phrase, "final agency action," means Congress must have intended to "situate Section 209 within the APA's existing review structure." Dkt. 103 at 29. Intervenors reject this argument, noting that this part "merely obviates any prudential (but not jurisdictional) ripeness concerns" about challenging the Bureau's statistical methods during the 2000 Census. Dkt. 96 at 13. We believe the Intervenors have the more persuasive argument, as various federal courts that have considered this provision have treated it as resolving any ripeness concerns.

For example, in *Glavin v. Clinton*, the three-judge panel considered the "final agency action" language in its "Case is Ripe for Review" section and found that the language means the legal challenge to the use of statistical sampling in the 2000 Census was "ripe for adjudication." 19 F. Supp. 2d 543, 547 (E.D. Va. 1998). On appeal, the Supreme Court also cited the same "final agency action" language in its justiciability section when determining whether the parties in the case had standing. *Dep't of Com.*, 525 U.S. at 332. Similarly, the three-judge panel in *U.S. House of Representatives v. U.S. Dep't. of Commerce* cited the same language in its "Ripeness" section and found "[i]n light of this statutory declaration, this court is hard-pressed to understand how the statistical sampling plan can be construed as a merely tentative position . . . . The fact that the legislation deeming the Census 2000 Report as final agency action may have been the result of 'compromise,' or that it may have been passed with 'political rancor,' . . . does not direct this court to question the unambiguous declarations contained therein." 11 F. Supp. 2d 76, 91 (D.D.C. 1998), *appeal dismissed*, 525 U.S.

1133 (1999); *see also Utah v. Evans*, 182 F. Supp. 2d 1165, 1173-74 (D. Utah 2001) (three-judge court) (discussing Section 209's "sufficiently concrete and final" language as "in furtherance of [Congress's] goal" to "provide a vehicle for expedited review of the methods chosen by Defendants for use in the 2000 census prior to the actual undertaking and completion of the census"), *aff'd*, 536 U.S. 452.

In more recent times, at least one other court has questioned the APA's applicability to Enumeration Clause claims. The District of Maryland stated, "the Supreme Court's failure to incorporate the APA's 'arbitrary and capricious' or 'abuse of discretion' language into the test for reviewing an Enumeration Clause challenge to the Secretary's decisions regarding how to conduct a decennial census cannot be ignored." *Nat'l Ass'n for Advancement of Colored People*, 382 F. Supp. 3d at 367.

Taken together, these authorities strongly suggest that the brief mention of "final agency action" was intended only to resolve justiciability issues for potential challengers of "the Census 2000 Operational Plan." Pub. L. No. 105-119, § 209(c)(2). Plaintiffs do not cite, and we cannot find, any contrary authority holding that Section 209's use of the phrase "final agency action" turned it into a pseudo-APA statute. Accordingly, the Court finds that Plaintiffs may not recast their time-barred Section 209 claims as hybrid APA claims.

2. 28 U.S.C. § 1658(a) applies over 28 U.S.C. § 2401(a)

Next, we consider whether 28 U.S.C. § 2401(a)'s six-year statute of limitations applies over 28 U.S.C. § 1658(a)'s four-year statute of limitations. Plaintiffs argue that because all their "claims have always been against the United States," 28 U.S.C. § 2401(a) will apply since the statute is used in suits "against the United States." Dkt. 103 at 20 (quoting 28 U.S.C. § 2401(a)). To support this argument, Plaintiffs claim that the United States has always been a defendant under 5 U.S.C. § 702. *Id.* ("Plaintiffs make this abundantly clear by adding the United States as a defendant, which they are entitled to do under the APA." (citing 5 U.S.C. § 702)). This argument fails for two reasons. First, as extensively discussed above, Plaintiffs' so-called APA claims in Counts III—V are improper and duplicative of their Section 209 claims in Counts I and II, so Plaintiffs do not have a pre-1990 cause of action. Second, the case law on 28 U.S.C. § 1658(a) agrees that the four-year statute of limitations applies when Congress creates a post-1990 cause of action without a specific limitations period.

On the first point, the Court need not repeat its analysis for why Counts III—V are duplicative of the Section 209 claims in Counts I and II. Suffice it to say, Plaintiffs cannot invoke Section 209 to challenge Defendants' conduct while simultaneously claiming the benefits of a longer statute of limitations under the APA. The six-year statute of limitations in 28 U.S.C. § 2401(a) applies to APA claims, *see U.S. Steel Corp. v. Astrue*, 495 F.3d 1272, 1280 (11th Cir. 2007), but there are no cognizable APA claims left.

On the second point, Plaintiffs' remaining Section 209 claims are still time-barred by 28 U.S.C. § 1658(a). *See* Dkt. 84 at 10-19. As to whether we should revisit our prior dismissal order and find that 28 U.S.C. § 2401(a) applies over 28 U.S.C. § 1658(a), we decline to do so. It is sufficiently clear that 28 U.S.C. § 1658(a) is the more specific statute that applies over 28 U.S.C. § 2401(a).

We begin with the text of 28 U.S.C. § 2401(a), which states that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." 28 U.S.C. § 2401(a). This means "28 U.S.C. § 2401(a) merely sets an outside time limit on suits against the United States." *Edwards v. Shalala*, 64 F.3d 601, 605 (11th Cir. 1995). Importantly, this outside time limit "cannot be read to mean that when Congress creates a cause of action without a specific limitations period, the general statute should govern." *Id.* (citation omitted). Indeed, it is "contrary to the Supreme Court's directives in *Stevens* [*v. Dep't of the Treasury*, 500 U.S. 1, 111 S. Ct. 1562, 114 L. Ed. 2d 1 (1991)] to apply a statute of general applicability when there are other more relevant statutory provisions." *Id.* (citations omitted). The Supreme Court has recently affirmed this interpretation of 28 U.S.C. § 2401(a), noting the statute "applies generally to suits against the United States unless the timing provision of a more specific statute displaces it." *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 808, 144 S. Ct. 2440, 219 L. Ed. 2d 1139 (2024).

On the other hand, 28 U.S.C. § 1658 provides a default statute of limitations for "civil action[s] arising under an

Act of Congress enacted after" December 1, 1990. 28 U.S.C. § 1658(a). "Except as otherwise provided by law," such actions "may not be commenced later than 4 years after the cause of action accrues." *Id.* When interpreting this statute, the Supreme Court has held that "a cause of action 'aris[es] under an Act of Congress enacted' after December 1, 1990—and therefore is governed by § 1658's 4-year statute of limitations—if the plaintiff's claim against the defendant was made possible by a post-1990 enactment." *Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 382, 124 S. Ct. 1836, 158 L. Ed. 2d 645 (2004). This makes sense, as the statute's purpose was to "spare[] federal judges and litigants the need to identify the appropriate state statute of limitations to apply to new [post-1990] claims . . . ." *Id.*

Since the Supreme Court's decision in *Jones*, federal courts have consistently applied 28 U.S.C. § 1658(a) whenever a post-1990 enactment creates a new cause of action. *See, e.g.*, *MSPA Claims 1, LLC v. Tower Hill Prime Ins. Co.*, 43 F.4th 1259, 1264 (11th Cir. 2022) (applying § 1658(a) to a Medicare Secondary Payer Act claim); *Baker v. Birmingham Bd. of Educ.*, 531 F.3d 1336, 1338 (11th Cir. 2008) (holding 42 U.S.C. § 1983 limitations period is determined under § 1658(a) for action based upon post-1990 amendments to 42 U.S.C. § 1981); *Tomei v. Parkwest Med. Ctr.*, 24 F.4th 508, 515 (6th Cir. 2022) (applying § 1658(a) to an Affordable Care Act claim); *McGreevey v. PHH Mortg. Corp.*, 897 F.3d 1037, 1042 (9th Cir. 2018) (applying § 1658(a) to the Servicemembers Civil Relief Act following a 2010 amendment that created a private right of action).

There is no question that Section 209 satisfies the Supreme Court's "bright-line rule" for when 28 U.S.C. § 1658 applies. *Tomei*, 24 F.4th at 513 ("Rather than inviting judges and litigants to investigate whether a plaintiff had a plausible claim before 1990, a bright-line rule—that a claim arises under the law that creates the cause of action—brings clarity and consistency."). In Counts I and II, Plaintiffs sue under Pub. L. No. 105-119, § 209(b), which Congress enacted on November 26, 1997. As such, Plaintiffs' Section 209 cause of action against Defendants was "made possible by a post-1990 enactment" and "therefore is governed by § 1658's 4-year statute of limitations." *Jones*, 541 U.S. at 382.

Plaintiffs resist this conclusion by contending that 28 U.S.C. § 2401(a) always displaces 28 U.S.C. § 1658(a)'s four-year statute of limitations when a federal official or agency is the defendant. We disagree for two reasons.

First, as we've mentioned, binding precedent contradicts this view. Section 2401(a)'s "outside time limit" on suits against the United States "cannot be read to mean that when Congress creates a cause of action without a specific limitations period, the general statute should govern." *Edwards*, 64 F.3d at 605; *accord Price v. Bernanke*, 470 F.3d 384, 388, 373 U.S. App. D.C. 445 (D.C. Cir. 2006) ("[T]here is nothing to suggest that Congress intended [§ 2401(a)] to govern any time a court finds a cause of action without a specific limitations period."); *Lavery v. Marsh*, 918 F.2d 1022, 1026 (1st Cir. 1990) ("Congress did not intend that this general statute should govern whenever Congress creates a cause of action without a specific limitations period.").

In contrast, "Section 1658(a) applies to *all* causes of action arising under federal statutes enacted after December 1, 1990 that do not otherwise set forth a specific limitations period." *Foudy v. Indian River Cnty. Sheriff's Off.*, 845 F.3d 1117, 1122 (11th Cir. 2017). The Supreme Court has recognized Congress's intent for Section 1658 to provide a "uniform federal statute of limitations" that applies broadly. *Jones*, 541 U.S. at 380. Because Section 209 does not have its own specific limitations period, case law is clear that we must apply the four-year period from 28 U.S.C. § 1658(a) rather than the six-year period from 28 U.S.C. § 2401(a).

Second, 28 U.S.C. § 1658(a) is both the "more specific," *Corner Post*, 603 U.S. at 808, and "more recent" of the two statutes, *Tug Allie-B, Inc. v. United States*, 273 F.3d 936, 948 (11th Cir. 2001). Section 1658 applies to a narrow class of claims—only civil actions arising under federal statutes enacted since 1990. And Congress enacted 28 U.S.C. § 1658(a) in 1990, 42 years after 28 U.S.C. § 2401(a). We therefore find that 28 U.S.C. § 1658's statute of limitations is the more relevant statutory provision because Section 209 is "an Act of Congress enacted after" December 1, 1990, which created "a civil action" against Defendants for the use of unlawful statistical methods. 28 U.S.C. § 1658(a); *see also* Pub. L. No. 105-119, § 209(b) ("Any person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law . . . in connection with the 2000 or any later decennial census . . . may in *a civil action* obtain declaratory, injunctive, and any other appropriate relief." (emphasis added)).

When applying 28 U.S.C. § 1658's four-year limitation to this case, the "challenge[d] conduct . . . concluded, at the latest, in August 2021[,] [b]ut [Plaintiffs] waited more than four years after that to sue, in September 2025[,] [s]o their claims are time-barred." Dkt. 84 at 12.[19] Therefore, the Court once again finds that "the Complaint is time-barred on its face." *Id.* at 19; *see Karantsalis*, 17 F.4th at 1319-20 ("[D]ismissal for failure to state a claim on statute of limitations grounds is appropriate only if it is apparent from the face of the complaint that the claim is time-barred." (citation modified)).

C. Final Agency Action

Finally, assuming *arguendo* that there are no redressability faults and that Plaintiffs' APA claims were proper, we would still conclude there is no final agency action for this Court to review. Plaintiffs allege that Defendants' "2020 Census Operational Plan 5.0 is [a] final agency action" since it describes how the Bureau adjusted its data collection efforts during the COVID-19 pandemic. Dkt. 88 ¶¶ 210, 215. Defendants, however, contend that the 5.0 Plan lacks the hallmarks of final agency action. Dkt. 97 at 29-31. We think Defendants' arguments prevail. This provides yet another reason to dismiss Counts III—V.

The APA's sovereign immunity waiver only applies to challenges to a "final agency action" that is not "committed to agency discretion by law." 5 U.S.C. §§ 701(a)(2), 704; *see*

19. For the sake of brevity, we incorporate by reference our prior analysis for why Plaintiffs' Section 209 claims are time-barred under 28 U.S.C. § 1658(a). *See* Dkt. 84 at 10-18.

Dep't of Army v. Blue Fox, Inc., 525 U.S. 255, 260-61, 119 S. Ct. 687, 142 L. Ed. 2d 718 (1999). Federal courts apply a two-part test to determine whether an agency action is "final" under the APA: "First, the action must mark the consummation of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Hawkes Co.*, 578 U.S. at 597 (quoting *Bennett v. Spear*, 520 U.S. 154, 177-78, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997)). In other words, "[t]he 'core question' about finality 'is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties.'" *Canal A Media Holding, LLC v. U.S. Citizenship & Immigr. Servs.*, 964 F.3d 1250, 1255 (11th Cir. 2020) (quoting *Franklin*, 505 U.S. at 797). These same requirements apply in a census case. *See Franklin*, 505 U.S. at 797 ("The core question is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties.").

Here, the Court agrees with Defendants that the 5.0 Plan is neither a decisionmaking process nor an action from which legal consequences flow. Dkt. 97 at 29-30. First, Defendants correctly point out that the 5.0 Plan was approved on February 4, 2022, "after census operations were completed, and served to describe 'design concepts and their rationale, identifying decisions made and remaining decisions, and . . . remaining risks.'" *Id.* at 29 (quoting 5.0 Plan at 1). Indeed, the 2020 Census counts that Plaintiffs challenge were released in April and August

2021, Dkt. 88 ¶ 90, and the planning and implementation of the 2020 Census occurred well before enumeration began. *See* 5.0 Plan at 31-52 (discussing operational design and testing for the 2020 Census beginning in 2012 and ending in 2018). But the 5.0 Plan, the allegedly offending final agency action under the APA, was not issued until February 2022. *See generally id.* It was a retrospective summary issued after the contested compilation and enumeration.

Nor did the 5.0 Plan establish the data methodology used in the 2020 Census. Instead, it documented the operational adjustments that had already occurred during enumeration, *see* 5.0 Plan at 57 (providing "[a]n overview of the 35 operations"), including those caused by the COVID-19 pandemic. *See id.* at 96-173 (detailing operations related to response data, and discussing the impact of the COVID-19 pandemic on those response data area operations). As such, the 5.0 Plan cannot be the consummation of Defendants' decisionmaking process for the 2020 Census since the memorandum is merely a recap—not a final decision—of the implemented design undertaken for the 2020 Census. *See id.* at 57 ("The v4.0 2020 Census Operational Plan represents the 'as planned' design, while the v5.0 2020 Census Operational Plan provides changes since the v4.0 plan and represents the 'as performed' design. Changes are separated into those that resulted from the COVID-19 pandemic and [those] that did not.").

Next, the Court cannot perceive any legal consequences that flow from the 5.0 Plan. As Defendants correctly note, "the legal consequences Plaintiffs identify arise from the census results themselves, not from a later document describing operational adjustments that occurred during the enumeration." Dkt. 97 at 29. That makes sense, since there were major legal challenges (under the APA) to the Bureau's various operational plans while the 2020 Census was ongoing—specifically, the Bureau's "COVID-19 Plan" and "Replan." *Nat'l Urb. League v. Ross*, 977 F.3d 698, 700 (9th Cir. 2020) (describing how the Bureau adopted a new COVID-19 plan "in April [2020] to accommodate the delays caused by COVID-19. . . . In early August [2020], a 'senior Department [of Commerce] official' directed the Bureau to change course and prepare a new plan for completing the census by the December 31, 2020, statutory deadline. . . . On August 3, 2020, the Bureau announced its adoption of the Replan, and its central feature: accelerating the COVID-19 Plan's deadline for the completion of field work and data collection"); *see Nat'l Urb. League v. Ross*, 508 F. Supp. 3d 663, 669-78 (N.D. Cal. 2020) (providing an extensive background on the Bureau's 4.0 Operational Plan, the COVID-19 Plan, and the Replan). It was these 2020 Census operational plans—especially the Replan—that directly affected Plaintiffs and resulted in legal consequences. *See Nat'l Urb. League*, 508 F. Supp. 3d at 700-03 (holding the Replan constituted final agency action due to the various ways the Replan directly affected the plaintiffs and gave rise to legal consequences, including the fact that the Replan "effectively binds [the Census Bureau]—for the next decade—to a less accurate 'tabulation of total population by States' under the 'decennial census.' . . . The result of this significant compression during this unprecedented pandemic will be inaccuracies in the 'tabulation of total population' . . . [that] harm constitutional and statutory interests" (citing 13 U.S.C. § 141(b)).

Conversely, the 5.0 Plan was issued after these legal challenges ended, after the various operational plans went into effect, and after the 2020 Census concluded. Its only purpose was to inform the public by summarizing how the 2020 Census was carried out in practice. If Plaintiffs wanted to challenge Defendants' operational changes due to the COVID-19 pandemic, *see* Dkt. 88 ¶¶ 48-63 (listing various operational changes to the Bureau's data collection efforts due to the COVID-19 pandemic), they should have filed suit in 2020 and challenged the Bureau's operational plans that actually determined their rights and obligations and gave rise to legal consequences. We find that no legal consequences can flow from a document issued after final enumeration that simply reviews the methodology and operational changes made during the 2020 Census.

Because the 5.0 Plan does not constitute final agency action, it is not reviewable under the APA. *See Bennett*, 520 U.S. at 178. For this reason, Counts III—V are due to be dismissed for lack of subject matter jurisdiction. *See Canal A Media Holding*, 964 F.3d at 1255 ("In [the Eleventh] [C]ircuit, dismissal for the reason that the challenged agency action was not a final order is a dismissal for lack of subject-matter jurisdiction." (citing *LabMD, Inc. v. FTC*, 776 F.3d 1275, 1278, 1280 (11th Cir. 2015))).

* * *

In sum, we find that Plaintiffs' Third Amended Complaint fails on multiple fronts. As a threshold issue, Plaintiffs lack Article III standing to bring their claims. Even if they had standing, we would still dismiss Plaintiffs' claims in Counts I and II as untimely and Counts III—V as foreclosed by the availability of an adequate alternative remedy. Finally, assuming Plaintiffs' APA claims are cognizable, there is no properly alleged final agency action for this Court to review, so we would (again) dismiss Counts III—V for lack of subject matter jurisdiction.

D. Dismissal with Prejudice

Under Rule 15(a) of the Federal Rules of Civil Procedure, "[a] party may amend its pleading once as a matter of course." Fed. R. Civ. P. 15(a)(1). "In all other cases," leave to amend should be granted "when justice so requires." Fed. R. Civ. P. 15(a)(2). Plaintiffs have already used up their amendment as a matter of course, *see* Dkt. 2, so Plaintiffs must either get "the opposing party's written consent or th[is] [C]ourt's leave." Fed. R. Civ. P. 15(a)(2). At the end of their response to the instant motions to dismiss, Plaintiffs briefly request leave to amend their Complaint. Dkt. 103 at 35. The Court, however, exercises its discretion and denies the request for leave to amend for two reasons.

First, as a general rule, "[a] district court is not required to grant a plaintiff leave to amend his complaint sua sponte when the plaintiff, who is represented by counsel, never filed a motion to amend nor requested leave to amend before the district court." *Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002) (en banc). Based on this rule, the Eleventh Circuit has held that "[w]here a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly." *Pop v. LuliFama.com LLC*, 145 F.4th 1285, 1298 (11th Cir. 2025) (quoting *Newton v. Duke Energy Fla., LLC*, 895 F.3d 1270, 1277 (11th Cir. 2018)). "In such a case, the request for leave to amend possesses no legal effect." *Id.* (citation modified). Here, because Plaintiffs' request for leave to amend their complaint under Rule 15(a)(2) is "imbedded within an opposition memorandum," it has "no legal effect." *Id.* (citation omitted). Plaintiffs' request for leave to amend is therefore "null, meaning that—at least at first glance—[this] [C]ourt [is] free to dismiss [Plaintiffs'] complaint with prejudice." *Id.* (citing *Ounjian v. Globoforce, Inc.*, 89 F.4th 852, 862 (11th Cir. 2023)).

Second, even if the Court were inclined to provide Plaintiffs with "an extra dose of grace," we find it is not called for here since any fourth amended complaint would be futile. *Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1133 (11th Cir. 2019). An "amendment is *not* warranted (1) where the plaintiff has indicated that he does not wish to amend his complaint, or (2) if a more carefully drafted complaint could not state a claim." *Id.* (citation modified). "Leave to amend a complaint is futile when the complaint as amended would still be properly dismissed." *Id.* (quoting *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007)). In other words, "[t]he futility issue is concerned less with whether [the plaintiff] *has* otherwise stated a claim against the [defendant] than with whether, when all is said and done, [the plaintiff] *can* do so." *Silberman*, 927 F.3d at 1133. Because we conclude that Plaintiffs' Third Amended Complaint fails on multiple grounds—specifically, lack of Article III standing, untimeliness, and no final agency action—we hold that a fourth amended complaint would be futile.

IV. Conclusion

For the foregoing reasons, it is hereby **ORDERED** and **ADJUDGED**:

1. Defendants' and Intervenors' Motions to dismiss the Third Amended Complaint, Dkts. 96, 97, are **GRANTED**.

2. The Third Amended Complaint, Dkt. 88, is **DISMISSED with prejudice**.[20]

3. The Clerk is directed to **TERMINATE** all pending motions and deadlines and **CLOSE** this case.

DONE AND ORDERED on July 7, 2026.

/s/ Robin S. Rosenbaum
United States Circuit Judge

/s/ William F. Jung
United States District Judge

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20. While a dismissal for lack of Article III standing or failure to state a claim is usually a non-merits decision and generally without prejudice, *see Stalley ex rel. United States v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008), we dismiss with prejudice based on the two grounds articulated above—failure to properly request leave to amend and futility.

Judge Merryday dissenting:

In November 1997, Congress passed the "1998 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act," § 209, 111 Stat. 2480, in which Congress finds, among other findings:

> (5) the decennial enumeration of the population is one of the most critical constitutional functions our Federal Government performs;
>
> (6) it is essential that the decennial enumeration of the population be as accurate as possible, consistent with the Constitution and laws of the United States;
>
> (7) the use of statistical sampling or statistical adjustment in conjunction with an actual enumeration to carry out the census with respect to any segment of the population poses the risk of an inaccurate, invalid, and unconstitutional census;
>
> (8) the decennial enumeration of the population is a complex and vast undertaking, and if such enumeration is conducted in a manner that does not comply with the requirements of the Constitution or laws of the United States, it would be impracticable for the States to obtain, and the courts of the United States to provide, meaningful relief after such enumeration has been conducted[.]

Pub. L. No. 105-119, Title II, § 209(a), 111 Stat. 2440, 2481.

The Act creates a private right of action for any "aggrieved person," that is, "any resident of a State whose congressional representation or district could be changed as a result of the use of a statistical method; any Representative or Senator in Congress; and either House of Congress." Pub. L. No. 105-119, § 209(d), 111 Stat. at 2482. The Act creates a private right of action in an extraordinarily broad array of persons, as well as an institutional right of action in both the House of Representatives and the Senate and in each senator and representative. The remedies available under The Act to a successful litigant are declaratory judgment, injunction, and any other "appropriate" relief. Pub. L. No. 105-119, § 209(b), 111 Stat. at 2481.

The Act imposes on any court that hears an action under Section 209 a duty "to advance on the docket and to expedite to the greatest possible extent the disposition of any such matter" and provides for review by appeal directly to the Supreme Court. Pub. L. No. 105-119, § 209(e)(1), 111 Stat. at 2482. In sum, The Act instantiates a remarkable, explicit, and privately enforceable congressional determination to correct an "inaccurate, invalid, and unconstitutional census"; to ensure the "actual enumeration" of the population that the Constitution requires; to protect "one of the most critical constitutional functions our Federal government performs"; and to ensure that the census "be as accurate as possible." The Act finds that "statistical sampling or statistical adjustment . . . with respect to any segment of the population poses the risk of an inaccurate, invalid, and unconstitutional census." Finding an "actual enumeration" of the population and the resulting establishment of just and accurate representation essential to a republican form of constitutional government, Congress in The Act provides to the public and to itself and each member of Congress a set of formidable tools to ensure the census is conducted and reported with accuracy and integrity.

The plaintiffs, including Congressman Byron Donalds and other affected Florida residents, allege that the COVID-19 pandemic struck the United States with force immediately before Census Day in 2020 and that the Census Bureau:

> responded by suspending normal procedures and fundamentally altering its approach to data collection and processing: Mobile Questionnaire Assistance was scaled back; mailing materials were delayed; field enumeration operations were postponed; early non-response follow-up was eliminated entirely; door-to-door procedures were revised to prohibit knocking; and field training was overhauled to minimize in-person contact while logistical resources shifted to procuring masks and sanitizer rather than counting people. . . . TAC ¶¶ 48-62.

The plaintiffs allege that, because of these and other irregularities, novelties, and improvisations, "whole-person imputation" rose from about 5.99 million in the 2010 census to 10.9 million in the 2020 census, although some suggest the number is much higher.

The plaintiffs allege that the Bureau's 2022 "Post-Enumeration Survey" (PES) admits a statistically significant overcount in eight states and a statistically significant undercount in thirteen states, although the same report for the 2010 census confirmed that no comparable overcount or undercount occurred in any state during the 2010 census. The plaintiffs allege further that in 2020 Florida was undercounted by 3.48% or about 760,000 persons and that the undercount cost Florida an additional congressional seat because Florida fell only 171,561 persons short of the population necessary to gain that additional seat. The plaintiffs allege that the 2020 undercount of population and the consequent loss of federal money for certain federal programs are costing Florida hundreds of millions of dollars in lost revenue.

A closer look at the 2020 Post-Enumeration Survey reveals that the numbers both the parties and the majority use are somewhat misleading. For example, the PES identifies eight states with an overcount — Hawaii, Minnesota, Ohio, New York, Massachusetts, Rhode Island, and Delaware — and six states with an undercount — Texas, Arkansas, Tennessee, Mississippi, Illinois, and Florida. In fact, the PES states no specific over-or under-count for any state; the PES states only a "confidence range" of 90% for the population count in each state. In other words, for each state, the PES provides a range (for Florida the range is -4.98% to -1.98%) and stipulates that the undercount or overcount has a 90% probability of falling within that range. But no place within that range is any more likely to prove accurate than any other place within the range, and the undercount or overcount has a 10% chance of falling outside that range. The 3.48% undercount (-3.48% in PES terms) attributed to Florida is merely the simple, arithmetic average of the high end and the low end of the confidence range. Actually, what the PES means is that — with a 90% chance of accuracy and 10% chance of inaccuracy — the error in Florida is somewhere, anywhere, within the range of -4.98% to -1.98%. By comparison, the 90% confidence range in New York means that the overcount is between +1.89% and +4.99% with a 10% percent chance that the error is outside that range. Oddly, for example, Maine is not included among the overcounted or undercounted states, but the confidence range for the Maine count is -0.93% to +5.33% with a simple, arithmetic average of +2.20%. Montana shows an undercount with a confidence range from -10.48% to +1.70% with a simple arithmetic average of -4.39% (and, of course, the ever-present 10% chance that the range is more or less than the "confidence range"). In contrast, Nevada shows a confidence range of -1.24% to +10.08% and a simple arithmetic average of a 4.42% overcount. In fact, the PES shows a confidence range for every state, and the fluctuations are dramatic.

Because statistics are notoriously slippery, opaque, and difficult to understand with precision and clarity (and with awareness and comprehension of the necessary reservations and conditions) and because the "understanding" that one acquires from viewing statistics is often erroneous or, at least, partially erroneous, and because statistics, including those in the census and the PES include many assumptions and definitions and methods that are subject to reasoned disagreement (or refutation), the statistical methods employed in both the 2020 census and the 2020 PES warrant explanation and exploration on a full record, including expert testimony, developed by the parties and this panel after a full adversary hearing and presented to the Supreme Court on appeal.

The "confidence range" for each state is but one example of the problem. With nothing approaching a factual record, much less a full record subjected to the adversarial process, the majority uncritically accepts an array of the Bureau's self-vindicating notions such as "the Bureau uses imputation only as a last resort." But, for example, paragraphs 49-67 of the third amended complaint allege a much different account, supported by specific facts, and conclude that the defendants "failed to fulfill the fundamental task of 'seek[ing] to reach each individual household." The plaintiffs seem to allege that the Bureau, presented with the COVID-19 outbreak, hastily abandoned established procedures and obligations and adopted new statistical and other methods that resulted in a flawed census instead of the constitutionally required "actual enumeration." Similarly, the majority repeats the Bureau's claim that "whole person imputation" resulted in "very little impact on the net coverage estimates." This claim, whatever the precise meaning of the several terms, is one of many that warrants a thorough inquiry but receives none.

Although each plaintiff, including a member of Congress, is a member of a category of persons explicitly granted by The Act a private right of action in the district court and although each plausibly alleges a claim, the majority in resolving a motion to dismiss adjudges that none of the plaintiffs has standing to sue and that Congress's grant of a private right of action is for each, including the member of Congress, a mere illusion. Certainly, Article III standing is a constitutional requirement, but in my view the majority's determination to summarily disregard Congress's determination that certain persons have standing to assert the constitutionally important claims created in The Act is, at least, hasty and more likely wrong (a complete factual record and an adversarial fact finding would surely help in that determination). The finding by Congress that the census is "one of the most critical constitutional functions our Federal Government performs" — a finding respecting a fundamental operation of legitimate government — is entitled to immense weight and respectful deference in assessing the sufficiency for Article III standing purposes of the injury to a party named in the statute and, based on that injury, awarded a cause of action in the district court. In the present circumstance, the awarding by Congress of a cause of action to an array of affected plaintiffs seems sufficient to find standing and to warrant the continuation of this action and a determination on a full record. As Congress suggests, the accuracy and integrity of the census, intimately akin to the accuracy and integrity of both the vote and the vote count in an election, is the foundation of legitimate government; we ignore this at our imminent peril. If the census and the vote are not right, nothing that follows from them is right. Establishing in open court the accuracy of the census (or correcting the census, if the census is wrong), much like establishing the integrity of the vote and the vote count, is not a burden too great to bear but a boon too valuable to forbear. Sometimes expediency — "kicking the can down the road," in the current phrase — yields the burden too great to bear, yields the price to dear to pay. If a person who receives a few unwanted voice or text messages has Article III standing to sue and a claim in the district court, why not someone whose congressional representation is diluted or distended and why not a member of Congress whose informational and representational interests are impaired and who, in both instances, is by Congress explicitly granted standing and a claim in the district court?

The majority addresses "redressability," but the discussion seems entirely misconceived. The majority seems to hold that a party lacks standing to sue about a matter of prospective governmental misconduct unless the party shows that a "favorable judgment" from this court, which in this instance implies a mandate from the Supreme Court of the United States after an appeal, would cause "a substantial likelihood that 'independent actors not before th[is] court' to take actions that remedy these injuries." I find this statement astonishing. An Article III court of the United States should not assume that any branch of government will ignore a mandate from the Supreme Court finding the census incorrectly determined, Congress incorrectly apportioned, appropriations unlawfully distributed, or citizens unlawfully represented. The majority's hypothesis of inaction, if correct, is more than alarming. But no plaintiff should have to establish, as a condition precedent to pursuing an action, that the government of the United States will act in good faith compliance with a mandate from the Supreme Court or otherwise will provide a complete remedy.

The majority finds that the plaintiffs' actions are barred by the four-year limitation in 28 U.S.C. § 1658(a), governing claims based on statutes enacted after 1990, and not the six-year limitation in 28 U.S.C. § 2401(a), governing claims based on actions against the United States. Although Section 1658(a) is the more recently enacted statute, governing all actions against any party, Section 2401(a) is the more specific statute, specifically governing an action against the United States. Section 1658(a) begins "[e]xcept as otherwise provided by law"; Section 2401(a) provides otherwise. To say the least, applying the general Section 1658(a) to supersede the more specific Section 2401(a) is not immediately and logically compulsory. To support this result, the majority cites a list of cases, but none of them is an action against the United States. The majority's most formidable citation, *Corner Post, Inc. v. Bd. of Governors of Fed. Res. Sys.*, 603 U.S. 799, 144 S. Ct. 2440, 219 L. Ed. 2d 1139 (2024), decides nothing about whether Section 1658(a) governs the applicable limitation in an action against the United States otherwise governed by Section 2401(a). Also, the majority cites *Tug Allie-B v. United States*, 273 F. 3d 936 (11th Cir. 2001), which affirms my decision in *In re Tug Allie-B*, 114 F. Supp. 2d 1301 (M.D. Fla. 2000), which was not an action against the United States but a maritime limitation action by a vessel to protect against a claim by the United States under the Park System Resource Protection Act. Although a sound and admirable affirmance by the circuit court of appeals, *Allie-B* says little about the present problem. The issue in *Allie-B*, a more difficult issue than the issue here, was the measure of damages and the party answerable for the damages and not the applicable limitation ("limitation" in *Allie-B* means "limitation of damages"). In *Allie-B*, the district judge and the three appellate judges, although agreeing on the result, had somewhat different reasoning; the fact that the PSRPA was the more recent statute did not permit a summary resolution of the matter on that basis.

In finding that the plaintiffs' claims in this action are barred, the majority finds that the four-year limitation began either on April 26, 2021, when the Bureau released the state-by-state population count used to apportion the House of Representative or on August 12, 2021, when the Bureau released the "redistricting file" data, used by the states, including Florida, to establish legislative districts. Assuming the four-year limitation applies and assuming the plaintiffs had sued on April 20, 2025, that is, within the four years the majority allows, the question arises whether the majority, employing the reasoning of the majority opinion in this action, would have permitted the action to persist. Apparently not. What of "redressability"? What of practicability? What of the certification? What of the convening and organization of a new Congress? What of laws passed, signed, and enforced in the interim by a misaligned Congress or state legislature? Under the majority's reasoning, the plaintiffs' action is lost to impracticability long before expiration of the applicable limitation.

The majority correctly cites *Utah v. Evans*, 536 U.S. 452, 122 S. Ct. 2191, 153 L. Ed. 2d 453 (2002), for the proposition that "if a lawsuit is brought soon enough after completion of the census and heard quickly enough, relief is not necessarily impracticable." But impracticability, under *Utah v. Evans* and the majority's view, bars any action long before the applicable limitation (whenever begun and whenever expired) bars the action. In fact, *Utah v. Evans* and the majority's (perhaps legally correct) view leave a prospective litigant an excruciatingly brief time, perhaps a matter of weeks, if any time at all (a plaintiff must analyze the data and develop a good faith belief in the basis for the claim, which probably requires retaining one or more of a specialized genre of experts and permitting the experts time to conduct a study), within which to begin an action after the Bureau releases the state-by-state population count or the "redistricting file" data.[21] All of these barriers

21. In an earlier opinion (Doc. 84 at 26) and in discussing *Department of Commerce v. United States House of Representatives*, 525 U.S. 316, 119 S. Ct. 765, 142 L. Ed. 2d 797 (1999), I noted that The Act seems to determine that the publication of the Operation Plan for the decennial census is sufficiently concrete and injurious to grant standing to sue, to accrue a cause of action, and to permit an action to challenge the plan if the plan is likely to cause damage. The 2020 plan appeared in November 2015. https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan.pdf Did a cause of action accrue at that time? Did a challenger have standing? Did the limitation period begin at that time? The 2030 plan appeared in July 2025. https://www2.census.gov/programs-surveys/decennial/2030/program-management/planning/operational-plan/2030-census-operational-plan.pdf Did a cause of action accrue at that time? Did a challenger have standing? Did the limitation begin at that time? Under the majority's holding, no litigant has standing and this congressional determination is a nullity.

occur in the face of a congressional enactment that manifestly undertakes to broaden the number of qualified litigants and the circumstances under which the litigants can assert a claim respecting the census and legislative apportionment. If the majority is correct, Section 209 of the "1998 Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act" has become perhaps the most strictly construed remedial statute in the history of remedial statutes (but the government is not famous for encouraging inquiry into mistakes by the government). *Utah v. Evans* and the law as applied by the majority combine to create for a prospective litigant an unseemly and perhaps insurmountable barrier, a legal and temporal trap — in my view that trap must not stand. When the conclusions are incongruous, check the premises, at least one of which is likely wrong.

Because of the duty "to advance . . . and to expedite" and because of the exceptional burden on the Supreme Court to review by appeal any final decision, this panel should disfavor any piecemeal determination of the claims in this action and decide as many issues as possible on a record as complete as possible and present to the Supreme Court the best available opportunity to achieve in one appeal a final disposition of the action and a much-needed advancement of the law governing standing to assert the claims created in The Act, the applicable limitation, and the meaning and implementation of an "actual enumeration," which is what the Constitution requires. As Justice Thomas stated in his dissent in *Utah v. Evans*:

> To be sure, the Census Clause enables Congress to prescribe the "Manner" in which the

> enumeration is taken. The Court suggests that "enumeration" implies the breadth of Congress' methodological authority, rather than its constraints. See *ante*, at 474. But while Congress may dictate the manner in which the census is conducted, it does not have unbridled discretion. For the purposes of apportionment, it must follow the Constitution's command of an "actual Enumeration."
>
> . . . .
>
> The text, history, and a review of the original understanding of the Census Clause confirm that an actual enumeration means an actual count, without estimation. While more sophisticated statistical techniques may be available today than at the time of the founding, the Framers had a great deal of familiarity with alternative methods of calculating population. They decided to constitutionalize the arduous task of an actual enumeration. I am persuaded that much like the earlier methods of estimation, hot-deck imputation — a modern statistical technique that the Census Bureau refers to as "estimation" — is not constitutionally permissible.

536 U.S. at 495, 506. Justice Thomas's thoughtful and constitutionally faithful dissent, based on an admirable account of the pertinent history, should provoke a reconsideration of *Utah v. Evans* and provide guidance for

achieving the result required by the "actual enumeration" clause of the Constitution.

/s/ Steven D. Merryday
United States District Judge

APPENDIX B — NOTICE OF APPEAL OF ORDERS GRANTING MOTIONS TO DISMISS OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION, FILED JULY 10, 2026

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:25-cv-2486
THREE-JUDGE PANEL

UNIVERSITY OF SOUTH FLORIDA COLLEGE REPUBLICANS, MICHAEL FUSELLA, PINELLAS COUNTY YOUNG REPUBLICANS, PARISA MOUSAVI, GRETCHEN ZOELLER, AND BYRON L. DONALDS,

Plaintiffs,

v.

SECRETARY OF COMMERCE, ACTING DIRECTOR, U.S. CENSUS BUREAU, AND THE UNITED STATES OF AMERICA,

Defendants,

ALLIANCE FOR RETIRED AMERICANS, MANUEL GUERRERO, AND CAMERON DRIGGERS,

Intervenors-Defendants.

Filed July 10, 2026

Appendix B

NOTICE OF APPEAL OF ORDERS GRANTING MOTIONS TO DISMISS

Notice is hereby given that Plaintiffs appeal to the Supreme Court of the United States from this Court's July 7, 2026, Orders dismissing the complaint with prejudice. Docs. 111, 112. This appeal is taken under Pub. L. No. 105-119, § 209(e), 111 Stat. 2440, 2482 (1997).

DATED: July 10, 2026

Respectfully submitted,

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APPENDIX C — PLAINTIFFS' THIRD AMENDED COMPLAINT IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, TAMPA DIVISION, DATED FEBRUARY 17, 2026

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 8:25-CV-02486

UNIVERSITY OF SOUTH FLORIDA COLLEGE REPUBLICANS AND ITS PRESIDENT, MICHAEL FUSELLA, INDIVIDUALLY; PINELLAS COUNTY YOUNG REPUBLICANS, AND ITS PRESIDENT, PARISA MOUSAVI, INDIVIDUALLY; GRETCHEN ZOELLER, INDIVIDUALLY; AND BYRON L. DONALDS, IN HIS OFFICIAL CAPACITY AS A MEMBER OF CONGRESS,

Plaintiffs,

v.

HOWARD W. LUTNICK, IN HIS OFFICIAL CAPACITY AS SECRETARY OF COMMERCE, GEORGE COOK, IN HIS OFFICIAL CAPACITY AS ACTING DIRECTOR OF THE U.S. CENSUS BUREAU, AND THE UNITED STATES OF AMERICA,

Defendants.

Appendix C

THIRD AMENDED COMPLAINT
INJUNCTIVE RELIEF REQUESTED
THREE JUDGES REQUIRED

The Panel previously dismissed this case as untimely under the 4-year "catch-all" statute of limitations for "'civil action[s] arising under an Act of Congress enacted after' December 1, 1990." ECF No. 84 (quoting 28 U.S.C. § 1658(a)). The Panel dismissed with leave to amend. This amended complaint clarifies that this suit is brought against the United States under the Administrative Procedure Act ("APA"), *see* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Pub. L. No. 105-119, § 209(c)(2), 111 Stat. 2440, 2482 (1997) (discussing "final agency action"); 5 U.S.C. § 702 (explaining that "[t]he United States may be named as a defendant" in an APA case); *Dep't of Com. v. New York*, 588 U.S. 752, 772 (2019) ("The taking of the census is not one of those areas traditionally committed to agency discretion,") making the applicable statute of limitations six years, *see* 28 U.S.C. § 2401(a); *see also Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 804 (2024) (noting that "[t]he default statute of limitations for suits against the United States" is six years).

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. The 2020 Census was materially and fundamentally different from any previous census as a result of the COVID-19 pandemic.

2. While statistical methods have been used for decades in the collection and processing of census data, the Defendants' use of statistical methods in the 2020 Census went far beyond prior practice.

3. This extensive use of statistical methods resulted in inaccurate population counts in certain States, particularly Florida.

4. Even Defendants admit that Florida was undercounted by a statistically significant 3.48% or about three-quarters of a million people. Courtney Hill, Krista Heim, Jinhee Hong, and Nam Phan, *Census Coverage Estimates for People in the United States by State and Census Operations*, U.S. Census Bureau 16 (2022), https://perma.cc/X5EP-W8YW.

5. Under Pub. L. No. 105-119, § 209(b) "aggrieved" persons can sue the government for using any statistical method (1) in violation of the Constitution or another provision of law; (2) in connection with a census; and (3) for the purposes of apportionment or redistricting.

6. The statute, in clarifying what qualifies as "final agency action" for purposes of § 209, makes clear that these suits are brought under the APA. Pub. L. No. 105-119, § 209(c)(2).

7. The 2020 Census suffered at least three legal defects cognizable under section 209 and the APA.

8. First, Defendants violated Article I, Section 2 of the United States Constitution by failing to take an "actual enumeration" of the people.

9. Although the Supreme Court said in *Utah v. Evans*, 536 U.S. 452, 477 (2002), that the Bureau's use of imputation in the 2000 Census did not categorically violate Article I, Section 2, the Court expressly left open the possibility that "substitution of statistical methods for efforts to reach households and enumerate each individual" may violate the Constitution. *Utah v. Evans*, 536 U.S. 452, 477 (2002). Defendants did just that in the 2020 Census.

10. Second, Defendants violated 13 U.S.C. § 141(a). While this section delegates broad authority to the Secretary to determine the "form and content" of the census, courts have put important guardrails around that authority, which the Secretary breached in conducting the 2020 Census.

11. Third, Defendants' decisions regarding the use of imputation in the 2020 Census violated the APA's reason-giving requirements in 5 U.S.C. § 706 and are therefore arbitrary and capricious.

12. For these reasons and those that follow, Plaintiffs seek relief from the Panel.

PARTIES

13. Plaintiff University of South Florida College Republicans ("USF Republicans") is a Tampa-based chapter of the College Republican National Committee and is part of the Florida Federation of College Republicans. The purpose and goal of this organization is to recruit, train, engage, and mobilize students to advocate for conservative ideals, participate in civic events, and increase their members' knowledge of the political process. USF's main campus address is 4202 E Fowler Ave, Tampa, FL 33620. This address is in the 15th Congressional District of Florida, which Republican Laurel Lee represents. *See Find Your Representative*, U.S. House of Reps., https://perma.cc/U2MC-32PR.

14. Plaintiff Michael Fusella is the President of USF Republicans and resides in the 15th Congressional District of Florida and within the Middle District of Florida.

15. Plaintiff Pinellas County Young Republicans ("Young Republicans") is a club intended to attract young people and provide for them an opportunity to achieve political expression and recognition, more effectively participate in the election process, and better develop and uphold the principles of the Republican Party as a service to the United States of America, the State of Florida, Pinellas County and its political subdivisions. The Young Republicans have an address at 9800 4th Street North, Suite 200, St. Petersburg, FL 33702. This address is in the 14th Congressional District of Florida, which Democrat Kathy Castor represents. *Florida's 14th Congressional District*, GOVTRACK.US, https://perma.cc/4BJS-NZQH.

16. Plaintiff Parisa Mousavi is the President of the Young Republicans and resides in the 14th Congressional District of Florida and within the Middle District of Florida.

17. Plaintiff Gretchen Zoeller resides in the 19th Congressional District of Florida and within the Middle District of Florida.

18. Plaintiff Byron Lowell Donalds is an elected Member of Congress representing the 19th congressional district in Florida. He sues in his official capacity as an individual Member of Congress pursuant to Pub. L. No. 105-119, § 209(d)(2).

19. Defendants, Commerce Secretary Howard Lutnick and Acting Director of the Census Bureau George Cook, are sued in their official capacities.

20. Plaintiffs sue the United States under 5 U.S.C. § 702, which allows the United States to be named as a Defendant in an APA case.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1346, 28 U.S.C. §§ 2201 and 2401, 5 U.S.C. § 706, Pub. L. No. 105-119, § 209(b) (codified at 13 U.S.C. § 141, note (Statistical Sampling or Adjustment in Decennial Enumeration of Population)), the U. S. Constitution, and the Court's equitable powers.

22. Venue is proper in this district under 28 U.S.C. §1391(b)(2) and (e)(1) because Plaintiffs reside in this District and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District.

23. Pursuant to Pub. L. No. 105-119, § 209(e)(1), this action "shall be heard and determined by a district court of three judges in accordance with [28 U.S.C. § 2284]."

24. 28 U.S.C. § 2284 provides, in pertinent part: "(a) a district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts."

25. Plaintiffs remain entitled to a three-judge panel under section 2284 because Plaintiffs still challenge the constitutionality of apportionment based on the 2020 census in this amended complaint.

26. Any final order of the panel shall be reviewable by direct appeal to the U.S. Supreme Court.

HISTORICAL BACKGROUND

27. Before ratifying the U.S. Constitution, the Framers debated whether representation should be apportioned equally among the States or according to population. Jason G. Gauthier, *History and the Census: 1788 Ratification of the U.S. Constitution*, U.S. Census Bureau (June 1, 2023), https://perma.cc/PNW6-KYSK.

28. On July 16, 1787, delegates to the Constitutional Convention voted to accept Connecticut delegate Richard Sherman's "Great Compromise" requiring apportionment of the House of Representatives following a census. Jason G. Gauthier, *History and the Census: 1788 Ratification of the U.S. Constitution*, U.S. Census Bureau (June 1, 2023), https://perma.cc/PNW6-KYSK; Max Far-rand, *The Framing of the Constitution of the United States* 99 (1913).

29. The decennial census is described in the U.S. Constitution, which requires an "actual Enumeration" of the population within every ten years, "in such Manner as [Congress] shall by Law direct." U.S. Const. art. I, § 2, cl. 3.

30. On March 1, 1790, Congress passed the first Census Act, requiring the marshals of the United States judicial districts to begin counting "inhabitants" on August 2, 1790. Jessie Kratz, *The 1790 Census and the First Veto*, U.S. Nat'l Archives (Apr. 4, 2022), https://perma.cc/3LSQ-33DG.

31. The marshals were tasked with visiting every household, posting completed census schedules in public places within each jurisdiction, and sending the President the aggregate amount. Jessie Kratz, *The 1790 Census and the First Veto*, U.S. Nat'l Archives (Apr. 4, 2022), https://perma.cc/3LSQ-33DG.

32. According to the 1790 Census, there were 3,929,214 inhabitants in the United States. Jessie Kratz, *The 1790 Census and the First Veto*, U.S. Nat'l Archives (Apr. 4, 2022), https://perma.cc/3LSQ-33DG.

MODERN APPROACH TO THE CENSUS

33. Now, 236 years later, the Census Bureau reports that 331,449,281 people reside in the United States as determined by the 2020 Census. *2020 Census Apportionment Results Delivered to the President*, U.S. Census Bureau (Apr. 26, 2021), https://perma.cc/G6BA-PL68.

34. Marshals of each judicial district are no longer used. *U.S. Marshals*, U.S. Census Bureau (May 20, 2025), https://perma.cc/SV6K-KZ7Y.

35. Posting of census-related information bulletins is now done online.

36. And "visiting every household" has become less feasible.

37. Article I, Section 2 requires an "Enumeration," a word that has a literal meaning but, for purposes of the census, has been reduced to a list of descriptors.

38. The term "Enumeration" does not impose a duty on the government to conduct a literal count, but only implies a general "counting process," which does not implicate any particular "methodological details." *Utah v. Evans*, 536 U.S. 452, 474 (2002).

39. The government may not estimate the population in the first instance, but it may use methods that "fill gaps or clarify confused information." *Utah v. Evans*, 536 U.S. 452, 475-76 (2002).

40. What is important is the "contrast" between what the government *does* and a "kind of 'conjectur[e]'"—"rather than the particular phrase used to describe the [] process." *Utah v. Evans*, 536 U.S. 452, 475 (2002).

41. Simply put, the only requirement of "enumeration" is that officials "seek to reach each individual household." *Utah v. Evans*, 536 U.S. 452, 477 (2002).

42. Additionally, "[t]he text of the Constitution vests Congress with virtually unlimited discretion in conducting the decennial 'actual Enumeration,'" and "Congress has delegated its broad authority over the census to the Secretary." *See Wisconsin v. City of New York*, 517 U.S. 1, 19–20 (1996) (citing U.S. Const. art. I, § 2, cl. 3).

43. The Census Act grants the Secretary the authority to conduct the decennial census "in such form and content as he may determine, including the use of sampling procedures and special surveys." 13 U.S.C. § 141(a).

44. However, the Secretary's authority is not "unbounded." *Dep't of Com. v. New York*, 588 U.S. 752, 771–72 (2019).

45. The Secretary has "a duty to conduct a census that is accurate and fairly accounts for the crucial representational rights that depend on the census and the apportionment." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (internal quotation marks omitted).

46. The Secretary's decisions about the "form and content" of the census must bear a "reasonable relationship to the accomplishment of an actual enumeration." *Dep't of Com. v. New York*, 588 U.S. 752, 768–69 (2019) (internal quotation marks omitted).

47. "The Secretary is assisted in the performance of [his] responsibility by the Bureau of the Census and its head, the Director of the Census." *Wisconsin v. City of New York*, 517 U.S. 1, 5 (1996) (citing 13 U.S.C. §§ 2, 21).

THE 2020 CENSUS

The Count

48. "Despite the Census Bureau's best efforts to plan for the execution of the 2020 Census, unexpected events, such as natural disasters, can occur," *2020 Census Operational Plan*, 5 U.S. Census Bureau 221 (2022), https://perma.cc/8XX6-YA5F, and did occur when the COVID-19 pandemic caused politicians to shut down the country two weeks before census day.

49. Because of the COVID-19 pandemic, the Census Bureau suspended normal procedures and employed new data collection and processing methodologies.

50. "Because of the COVID-19 pandemic," the scope of the Mobile Questionnaire Assistance was refined to focus on high-traffic COVID-19 supply or service areas. *2020 Census Operational Plan*, 5 U.S. Census Bureau 106 (2022), https://perma.cc/8XX6-YA5F.

51. "Because of the COVID-19 pandemic," two additional mailings were added due to low response. *2020 Census Operational Plan*, 5 U.S. Census Bureau 106 (2022), https://perma.cc/8XX6-YA5F.

52. "Because of the COVID-19 pandemic," the internet-based self-response time period was extended. *2020 Census Operational Plan*, 5 U.S. Census Bureau 106 (2022), https://perma.cc/8XX6-YA5F.

53. "Because of the COVID-19 pandemic," contacting a respondent was removed from the manual processing stage of Non-ID processing. *2020 Census Operational Plan*, 5 U.S. Census Bureau 111 (2022), https://perma.cc/8XX6-YA5F.

54. "Because of the COVID-19 pandemic," the early non-response follow-up was descoped from the operation. *2020 Census Operational Plan*, 5 U.S. Census Bureau 127 (2022), https://perma.cc/8XX6-YA5F.

55. "Because of the COVID-19 pandemic," multiunit manager visits for non-response follow-up were not grouped correctly. *2020 Census Operational Plan*, 5 U.S. Census Bureau 127 (2022), https://perma.cc/8XX6-YA5F.

56. "Because of the COVID-19 pandemic," field procedures in areas where housing units do not have mail delivered to a physical address were revised to eliminate the step of knocking on the door of a housing unit to ask about the address and additional living quarters. *2020 Census Operational Plan*, 5 U.S. Census Bureau 142 (2022), https://perma.cc/8XX6-YA5F.

57. "Because of the COVID-19 pandemic," the Count Question Resolution schedule changed, creating delays in upstream processes. *2020 Census Operational Plan*, 5 U.S. Census Bureau 152 (2022), https://perma.cc/8XX6-YA5F.

58. "Because of the COVID-19 pandemic," telephone response was added to "Island Area Censuses," where only in-person interviews had been permitted. *2020 Census Operational Plan*, 5 U.S. Census Bureau 155 (2022), https://perma.cc/8XX6-YA5F.

59. "Because of the COVID-19 pandemic," field follow-up and end-offield data collection schedules for Island Area Censuses were shifted by three and four months, respectively. *2020 Census Operational Plan*, 5 U.S. Census Bureau 155 (2022), https://perma.cc/8XX6-YA5F.

60. "Because of the COVID-19 pandemic," call center staff positions at the Decennial Service Center were transitioned to work-from-home assignments. *2020 Census Operational Plan*, 5 U.S. Census Bureau 168 (2022), https://perma.cc/8XX6-YA5F.

61. "Because of the COVID-19 pandemic," field training was generally modified across operations to minimize in-person contact. *2020 Census Operational Plan*, 5 U.S. Census Bureau 170 (2022), https://perma.cc/8XX6-YA5F.

62. "Because of the COVID-19 pandemic," logistical management shifted to focus on procuring and distributing

thousands of masks, hand sanitizer, sanitizing wipes, and similar products. *2020 Census Operational Plan*, 5 U.S. Census Bureau 173 (2022), https://perma.cc/8XX6-YA5F.

63. Despite then Director of the Census Bureau Steven Dillingham assuring the American people that "[o]perations for the 2020 Census and our ongoing household surveys have procedures built in that specifically anticipate epidemics and pandemics," the Census Bureau had to fundamentally alter its approach to data collection and processing because of the COVID-19 pandemic. *Statement from Director Dr. Steven Dillingham*, U.S. Census Bureau (Feb. 26, 2020), https://perma.cc/KN8S-56NG.

64. The Census Bureau admits in its Post Enumeration Survey ("PES") that it faced challenges driven by the pandemic and general trends of decreasing response to the survey. Shadie Khubba, Krista Heim & Jinhee Hong, *National Census Coverage Estimates for People in the United States by Demographic Characteristics: 2020 Post-Enumeration Survey Estimation Report* 3 (2022), https://perma.cc/8RXP-PLQU.

65. Defendants failed to fulfill the fundamental task of "seek[ing] to reach each individual household," *Utah v. Evans*, 536 U.S. 452, 477 (2002), in the 2020 Census.

66. Instead, Defendants used "statistical methods [to] substitute for any such effort"—something the "Framers did not believe the Constitution authorized." *Utah v. Evans*, 536 U.S. 452, 477 (2002) (citing *Dep't of*

Com. v. U.S. House of Representatives, 525 U.S. 316, 346–49 (1999)).

67. And though the Supreme Court has recognized the use of statistical methods in conducting the census "after [the Census Bureau] has exhausted its efforts to reach each individual," the Bureau's efforts in the 2020 Census can hardly be considered exhaustive. *Utah v. Evans*, 536 U.S. 452, 477 (2002).

68. In fact, the Bureau estimates that 18.8 million people were "omitted" from the 2020 Census. Shadie Khubba, Krista Heim & Jinhee Hong, *National Census Coverage Estimates for People in the United States by Demographic Characteristics: 2020 Post-Enumeration Survey Estimation Report* 5 (2022), https://perma.cc/8RXP-PLQU.

69. The Bureau's attempt to "account" for "many of these omitted people" was to impute them into the count. Shadie Khubba, Krista Heim & Jinhee Hong, *National Census Coverage Estimates for People in the United States by Demographic Characteristics: 2020 Post-Enumeration Survey Estimation Report* 5 (March 2022), https://perma.cc/8RXP-PLQU; Pat Cantwell, *How We Complete the Census When Households or Group Quarters Don't Respond*, U.S. Census Bureau (2021), https://perma.cc/B5DK-BH2E.

70. "Imputation is a statistical technique used to fill in missing information." Jessica DeJesus & Sarah Konya, *2020 Census Item Nonresponse and Imputation*

Assessment Report: A New Design for the 21st Century 3 (2023), https://perma.cc/VQ2A-4R9K.

71. Imputation is therefore by definition a statistical method because it statistically adjusts, "to add or subtract counts to or from the enumeration of the population as a result of statistical inference." Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Pub. L. No. 105-119, § 209(h)(1), 111 Stat 2440, 2483 (1997).

72. There are three main types of imputation that the Census Bureau used in the 2020 Census: (1) assignment; (2) allocation; and (3) substitution. Jessica DeJesus & Sarah Konya, *2020 Census Item Nonresponse and Imputation Assessment Report: A New Design for the 21st Century* 3 (2023), https://perma.cc/VQ2A-4R9K.

73. Assignment—the preferred imputation method—was used when "a response [was] either missing or not consistent with other responses and [the missing] value [could] be determined based on other information provided for that same person or household." Jessica DeJesus & Sarah Konya, *2020 Census Item Nonresponse and Imputation Assessment Report: A New Design for the 21st Century* 3 (2023), https://perma.cc/VQ2A-4R9K.

74. Allocation was used when "a response [was] either missing or not consistent with other responses and [the missing] value [could] not be determined based on information provided for that same person. Jessica DeJesus & Sarah Konya, *2020 Census Item Nonresponse*

and Imputation Assessment Report: A New Design for the 21st Century 3 (2023), https://perma.cc/VQ2A-4R9K.

75. In this case, the Bureau would assign an "allocation" from another person within the housing unit (HU) or group quarter (GQ) or from a nearby HU/GQ. Jessicas DeJesus & Sarah Konya, *2020 Census Item Nonresponse and Imputation Assessment Report: A New Design for the 21st Century* 3 (2023), https://perma.cc/VQ2A-4R9K.

76. Substitution—the least preferred method of imputation—was used when "characteristics for every person in the HU [were] missing." Jessica De-Jesus & Sarah Konya, *2020 Census Item Nonresponse and Imputation Assessment Report: A New Design for the 21st Century* 3 (2023), https://perma.cc/VQ2A-4R9K.

77. In this case, the Bureau would use data from a nearby HU to "represent" the "missing" people. Jessica DeJesus & Sarah Konya, *2020 Census Item Nonresponse and Imputation Assessment Report: A New Design for the 21st Century* 3 (2023), https://perma.cc/VQ2A-4R9K.

78. Whole-person imputation is a type of substitution imputation. Timothy Kennel, *2020 Post-Enumeration Survey: Defining Whole-Person Census Imputations* 1 (2023), https://perma.cc/33NM-SLA9.

79. The Census Bureau's PES—which admittedly uses statistical sampling to check the "net coverage error rates at the national level," Shadie Khubba, Krista Heim

& Jinhee Hong, *National Census Coverage Estimates for People in the United States by Demographic Characteristics: 2020 Post-Enumeration Survey Estimation Report* 1 (2022), https://perma.cc/8RXP-PLQU—found that 10.9 million people, or 3.4% of the population, were imputed through whole-person imputation in the 2020 Census.[1] Timothy Kennel, *2020 Post-Enumeration Survey: Defining Whole-Person Census Imputations* 1 (2023), https://perma.cc/33NM-SLA9.

80. This was up from 5.99 million whole-person imputations in 2010, and 5.77 million whole-person imputations in 2000. Shadie Khubba, Krista Heim & Jinhee Hong, *National Census Coverage Estimates for People in the United States by Demographic Characteristics: 2020 Post-Enumeration Survey Estimation Report* 6 (2022), https://perma.cc/8RXP-PLQU.

81. "Whole-person imputation" uses administrative records or other "imputation methods" based on people in a similar nearby household to fill "person characteristics." America Counts Staff, *2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022), https://perma.cc/B49T-E6HZ.

82. It is used when a record is considered incomplete, or "when very little information about the household or

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1. The Bureau indicated in the PES that there may be an additional 6.3 million whole-person imputations that should be added but weren't due to a definitional difference between the 2010 and 2020 Censuses, bringing the total closer to 17.1 million.

the people in the household was obtained from direct data collection efforts." America Counts Staff, *2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022), https://perma.cc/B49T-E6HZ.

83. But "direct data collection efforts" were thwarted by the arrival of the COVID-19 pandemic. America Counts Staff, *2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022), https://perma.cc/B49T-E6HZ.

84. "The COVID-19 pandemic may or may not have impacted unit response rates, which then would have an impact on [Item Nonresponse] rates and the amount of characteristic imputation needed." Jessica DeJesus & Sarah Konya, *2020 Census Item Nonresponse and Imputation Assessment Report: A New Design for the 21st Century* § 1.1 (2023), https://perma.cc/SF5Q-8A2C.

85. The COVID-19 pandemic "may have made people more hesitant to speak to an enumerator face to face." Jessica DeJesus & Sarah Konya, *2020 Census Item Nonresponse and Imputation Assessment Report: A New Design for the 21st Century* § 1.1 (2023), https://perma.cc/SF5Q-8A2C.

86. "The mailing materials were delayed." Jessica DeJesus & Sarah Konya, *2020 Census Item Nonresponse and Imputation Assessment Report: A New Design for the 21st Century* § 1.1 (2023), https://perma.cc/SF5Q-8A2C.

87. "Field enumeration operations were delayed." Jessica DeJesus & Sarah Konya, *2020 Census Item Nonresponse and Imputation Assessment Report: A New Design for the 21st Century* § 1.1 (2023), https://perma.cc/SF5Q8A2C.

88. Imputation was not "used sparingly only after [the Bureau] ha[d] exhausted its efforts to reach each individual." It was used extensively and differed in "principle from other efforts used since 1800 to determine the number of missing persons." *Utah v. Evans*, 536 U.S. 452, 477 (2002).

89. The Bureau admits that the 2020 Census results—as analyzed through the PES, including the net-error rates—were "fit for the purposes of apportionment and redistricting *upon their release*." America Counts Staff, *2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022) (emphasis added), https://perma.cc/B49T-E6HZ.

90. The apportionment and redistricting data was released in April and August 2021, respectively. *2020 Census Apportionment Results Delivered to the President*, U.S. Census Bureau (Apr. 26, 2021), https://perma.cc/G6BAPL68.

91. But the PES—which found 18.8 million people missing nationally, and nearly 760,000 from Florida—did not come out until Spring 2022. *Post-Enumeration Surveys*, U.S. Census Bureau, https://perma.cc/RZB4-899S.

92. At this point after "their release", the Bureau revealed what many assumed given the nature of the COVID-19 pandemic—that the 2020 Census results were not fit for the purposes of apportionment and redistricting.

93. And though the Bureau claims that the "PES data cannot answer why a particular state may have experienced [an undercount]," it is clear that the "COVID-19 pandemic and other long-standing challenges potentially affected the accuracy of 2020 Census counts." *2020 Census: Coverage Errors and Challenges Inform 2030 Plans*, U.S. Gov't Accountability Off. (Nov. 21, 2024), https://perma.cc/9J82-LBWK.

94. In fact, in the 2010 Census, the Bureau reported no "statistically significant undercount or overcount in the population or housing units for any state," *Census Bureau Releases Estimates of Undercount and Overcount in the 2010 Census*, U.S. Census Bureau (May 22, 2012), https://perma.cc/E7GP4YBY, whereas the 2020 Census yielded undercounts and overcounts in a total of 14 states.

95. The changes between the 2010 and 2020 Censuses caused these miscounts, including COVID-19-related procedural changes and intra-agency methodological choices. *2020 Census: Coverage Errors and Challenges Inform 2030 Plans, GAO-25-107160*, U.S. Gov't Accountability Off. (Nov. 21, 2024), https://perma.cc/H6GL-EAGR.

96. These changes led to more imputation, which led to inaccurate results.

97. Any attempt by Defendants to assign blame away from their choice to use imputation to low response rate or inability to reach households due to shutdowns, fails particularly for Florida, which was one of the most "open" states during the COVID-19 pandemic. Scott A. Rivkees, *The Shifting Impact and Response to COVID-19 in Florida*, Front. in Pub. Health, Figure 1. (Feb. 19, 2024), https://perma.cc/E5BL-D8VF.

98. The Bureau claims its goal "for the census is always to get a complete and accurate count," but the Bureau sacrifices accuracy for counts that are good enough, or "fit for" use. America Counts Staff, *2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022), https://perma.cc/B49T-E6HZ.

99. The Constitution demands more than results that are simply "of suitable quality." America Counts Staff, *2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022), https://perma.cc/B49T-E6HZ.

100. The Bureau claims that the PES is simply an informational tool and "has never been intended to change the decennial Census." America Counts Staff, *2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022), https://perma.cc/B49T-E6HZ.

101. The Bureau "offers" the Count Question Resolution ("CQR") process for states to "request a review

of their boundaries and housing counts to identify errors." America Counts Staff, *2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022), https://perma.cc/B49T-E6HZ.

102. However, the "CQR does not alter redistricting data, apportionment results, or other 2020 Census data products." America Counts Staff, *2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022), https://perma.cc/B49T-E6HZ.

103. In other words, despite Defendants' admission that it vastly used imputation in the 2020 Census that produced statistically significant over-counts and undercounts, which resulted in data sets that were not fit for apportionment and redistricting, the results of the 2020 Census are set in stone and completely immune from challenge.

Apportionment

104. The President then sent this inaccurate estimation of the population to Congress to be used to reapportion congressional seats. *2020 Census Apportionment Results Delivered to the President*, U.S. Census Bureau (Apr. 26, 2021), https://perma.cc/G6BA-PL68.

105. The Constitution requires that each state have at least one representative seat in the House of Representatives. U.S. Const. art. I, § 2 cl. 3.

106. After allocating this initial seat, the Census Bureau uses an "apportionment calculation" to distribute the remaining 385 seats among the 50 states. Kristin Koslap & Steven Wilson, *How Apportionment is Calculated*, U.S. Census Bureau (Apr. 26, 2021), https://perma.cc/Z9X7-WNAV.

107. The calculation attempts to minimize the percentage differences in the number of people per representative among the states. Kristin Koslap & Steven Wilson, *How Apportionment is Calculated*, U.S. Census Bureau (Apr. 26, 2021), https://perma.cc/Z9X7-WNAV.

108. The calculation does this by (1) assigning priority values to each state based on apportionment population; (2) sorting these values from largest to smallest; and (3) allocating a seat to a state each time one of its values appears in the largest 385 values. Kristin Koslap & Steven Wilson, *How Apportionment is Calculated*, U.S. Census Bureau (Apr. 26, 2021), https://perma.cc/Z9X7-WNAV.

109. At a very basic level, the higher apportionment population a state has, the larger priority values it will have, yielding more House seats.

110. In 2020, there were a total of 3,450 priority values among the states. Kristin Koslap & Steven Wilson, *How Apportionment is Calculated*, U.S. Census Bureau (Apr. 26, 2021), https://perma.cc/Z9X7-WNAV.

111. California's priority values appeared 52 times in the 435 largest values. *Priority Values for 2020 Census*

Apportionment, U.S. Census Bureau https://perma.cc/ZE9T-RZJC.

112. Florida's priority values appeared 28 times. *Priority Values for 2020 Census Apportionment*, U.S. Census Bureau, https://perma.cc/ZE9TR-ZJC.

113. Texas's priority values appeared 38 times. *Priority Values for 2020 Census Apportionment*, U.S. Census Bureau, https://perma.cc/ZE9T-RZJC.

114. New York's priority values appeared 26 times and would have appeared a 27th time, but New York missed the 435th spot (or seat) by 89 people. *Priority Values for 2020 Census Apportionment*, U.S. Census Bureau, https://perma.cc/ZE9T-RZJC; *Top Ten Runner-Up States to Almost Gain Another Congressional Seat: 2020 Census*, U.S. Census Bureau tbl. B1. https://perma.cc/JFR6-H2F5.

115. Defendants undercounted Florida by 3.48% or close to three-quarters of a million people. Courtney Hill et al., *Census Coverage Estimates for People in the United States by State and Census Operations 2020 Post-Enumeration Survey Estimation Report*, U.S. Census Bureau 16 (2022), https://perma.cc/X5EP-W8YW.

116. Analysis shows that Florida missed an additional seat by 171,561 people, falling in the priority value order behind the following states: (1) New York (436);

(2) Ohio (437); and (3) Texas (438).[2] *2020 Apportionment Population Counts from CB*, Election Data Services, Inc. (Apr. 26, 2021), https://perma.cc/Q5EL-BETQ.

117. But according to the PES, New York and Ohio were both over-counted. Courtney Hill et al., *Census Coverage Estimates for People in the United States by State and Census Operations 2020 Post-Enumeration Survey Estimation Report*, U.S. Census Bureau 1 (June 2022), https://perma.cc/X5EPW8YW.

118. So not only were the *Top Ten Runner-Up States to Almost Gain Another Congressional Seat: 2020 Census* values wrong, U.S. Census Bureau tbl. B1, https://perma.cc/JFR6-H2F5, but the entire *Priority Values for 2020 Census Apportionment* values were wrong, U.S. Census Bureau, https://perma.cc/ZE9T-RZJC.

119. Had the Bureau done an actual enumeration and yielded accurate results, the priority values would have changed.

120. Had the priority values changed, the allocation of House seats would have changed.

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2. Election Data Services, Inc. ("EDS") is a "political consulting firm specializing in redistricting, election administration, and the analysis and presentation of census and political data." EDS consults state and local governments regarding apportionment and redistricting. EDS President Kimball Brace was appointed to the 2010 Census Advisory Committee. *Company Profil*e, Election Data Services, https://perma.cc/K53V-WPPY.

121. For example, Minnesota appeared in the 435th spot in the priority values. *Priority Values for 2020 Census Apportionment*, U.S. Census Bureau, https://perma.cc/ZE9T-RZJC.

122. New York was in spot 436. *Priority Values for 2020 Census Apportionment*, U.S. Census Bureau, https://perma.cc/ZE9T-RZJC.

123. Ohio was in spot 437. *Priority Values for 2020 Census Apportionment*, U.S. Census Bureau, https://perma.cc/ZE9T-RZJC.

124. Texas and Florida were in spots 438 and 439, respectively. *Priority Values for 2020 Census Apportionment*, U.S. Census Bureau, https://perma.cc/ZE9T-RZJC.

125. But the Bureau admits that Minnesota, New York, and Ohio were overcounted and that Texas and Florida were undercounted. Courtney Hill et al., *Census Coverage Estimates for People in the United States by State and Census Operations: 2020 Post-Enumeration Survey Estimation Report*, U.S. Census Bureau a 1 (June 2022), https://perma.cc/X5EP-W8YW.

126. Had the count been correct, Texas and Florida would have moved into the top 435 spots and gained seats.

Redistricting

127. The Census Bureau also used the census estimates of state populations to produce the required Public Law. 94-171 Redistricting Data report to the States. *Decennial Census P.L. 94-171 Redistricting Data*, U.S. Census Bureau (Nov. 29, 2023), https://perma.cc/YSG6-XVMM.

128. Florida relies on an accurate "federal decennial statewide census" for "[a]ll acts of the Florida Legislature based upon population and all constitutional apportionments." Fla. Stat. § 11.031 (2025).

129. "After each decennial Census the Legislature redraws the districts from which Florida voters elect their state representatives, state senators, and members of the U.S. House of Representatives." *Redistricting*, The Florida Senate, https://perma.cc/G6V7-SJT8 (last visited Feb. 13, 2026).

130. Florida redistricts to account for "uneven growth rates in different parts of the state." *Redistricting*, The Florida Senate, https://perma.cc/G6V7-SJT8 (last visited Feb. 13, 2026).

131. Florida began the redistricting process after the 2020 Census in January 2022 and completed the process in April 2022. *Redistricting*, The Florida Senate, https://perma.cc/G6V7-SJT8 (last visited Feb. 13, 2026).

132. Both the U.S. Constitution and the Florida Constitution require equal representation, meaning that "districts shall be as nearly equal in population as is practicable." Fla. Const. art. III § 21(b); U.S. Const. amend. XIV; *Reynolds v. Sims*, 377 U.S. 533, 539 (1964).

133. However, the Florida Legislature could not have meaningfully fulfilled this mandate when the Census Bureau admits that over 700,000 Floridians were missing.

134. Now, Governor DeSantis has announced that in April 2026, Florida will embark on a mid-decade special legislative session for the purpose of redistricting. Exec. Off. of the Governor Ron DeSantis, *Governor Ron Desantis Announces Special Legislative Session on Congressional Redistricting* (Jan. 7, 2026), https://perma.cc/XXY7-356Y.

135. These new boundaries are fraught from the outset due to the overreach of the Defendants in using statistical methods to vastly fill in the gaps during the 2020 Census.

The Secretary's Authority Over the Census

136. The Defendants' decision to use extensive imputation during the 2020 Census did not bear "a reasonable relationship to the accomplishment of an actual enumeration." *Dep't of Com. v. New York*, 588 U.S. 752, 768–69 (2019) (quoting *Wisconsin v. City of New York*, 517 U.S. 1, 20 (1996)).

137. By imputing 10.9 million people to the count, the Secretary failed to provide an enumeration that "fairly account[ed] for the crucial representational rights that depend on the census and the apportionment." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (internal quotation marks omitted).

138. Doubling down on this abdication of authority, the Secretary provided to the President an inaccurate "tabulation of total population by States . . . for the apportionment of Representatives of Congress among the several States." 13 U.S.C. § 141(b).

139. The inadequate tabulation led the President to send to Congress inaccurate apportionment data, which led Congress to inaccurately reapportion representation among the states. *2020 Census Apportionment Results Delivered to the President*, U.S. Census Bureau (Apr. 26, 2021), https://perma.cc/G6BA-PL68.

140. As recently as August 2025, the President has called for Defendants to "immediately begin work on a new and highly accurate CENSUS based on modern day facts and figures. . . ." Donald J. Trump (@realDonaldTrump), TRUTH SOCIAL (Aug. 7, 2025, at 7:22 ET), https://perma.cc/TLB2-QFJZ.

141. Instead of an accurate population count, the President, Congress, and the American people received "counts that provide a vivid portrait of our nation's people." America Counts Staff, *2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022), https://perma.cc/B49T-E6HZ.

142. The Constitution requires an enumeration, not an artistic rendering of something like the population.

The Impact on the Plaintiffs

Representation

143. Defendants undercounted the population of Florida by 3.48%. *See 2020 Census Undercounts in Six States, Overcounts in Eight*, U.S. Census Bureau (May 19, 2022), https://perma.cc/B49T-E6HZ.

144. A 3.48% undercount in Florida translates to about 760,000 people. *Florida Was Third-Largest State in 2020 With Population of 21.5 Million*, U.S. Census Bureau (Aug. 25, 2021), https://perma.cc/X3CD-CK58.

145. Florida narrowly missed gaining an additional U.S. House seat, falling short by approximately 172,000 people. Election Data Services, *2020 Apportionment Population Counts from CB* (Apr. 26, 2021), https://perma.cc/Q5EL-BETQ.

146. But for Defendants' vast use of statistical methods on 2020 census data, Florida would have gained an additional House seat and an additional vote in the Electoral College.

147. The loss of a House seat necessarily means that Florida Plaintiffs vote in larger congressional districts, thereby having their votes diluted. *See Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020) ("To be sure, vote dilution can be a basis for standing.").

Funding

148. More than 350 Federal programs determine funding allocations based on census population totals. Ceci Villa Ross, *Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021* 41 (2023), https://perma.cc/8C7Y-XHX8.

149. In many instances, the states receive these allocated monies and double down on the erroneous census-based presuppositions by further distributing funds based on local district, county, or city size.

150. For example, the Highway Planning and Construction Program ("HPCP") allocates funding based on census numbers. *See* America Counts Staff, *Population Count Will Inform How and Where Billions of Dollars Will Be Spent for the Next Decade*, U.S. Census Bureau (Dec. 4, 2019), https://perma.cc/LC3T-HGMH.

151. Florida's 14th and 19th districts have received more than $108,459,103 from the HPCP since 2021. *CFDA 20.205: Highway Planning and Construction Program*, USASpending, https://perma.cc/NFP5-NBRQ (subaward congressional district FL-14 & FL-19).

152. Florida's 19th Congressional district contains all of Lee County, some of Collier County, and a sliver of Charlotte County. Florida Senate Committee on Reapportionment, *2022-2032 Florida Congressional Districts* (Apr. 22, 2022), https://perma.cc/LJ2G-CD6Z.

153. After the 2020 census, all three of these counties' populations increased.

154. The population of Lee County increased by more than 20%. Florida Redistricting[3], *County Population Change Web Map*, https://perma.cc/26G6-4K2T.

155. The population of Collier County increased by 15%-20%. Florida Redistricting, *County Population Change Web Map*, https://perma.cc/9CK7-99PA.

156. The population of Charlotte County increased by 15%-20%. Florida Redistricting, *County Population Change Web Map*, https://perma.cc/3G65-7MB2.

157. Had Florida been counted correctly in the 2020 census, it is clear that the population of the 19th Congressional district would have increased even more.

158. Federal funding tied to the 19th District's population would have also increased.

159. In total, the Florida Chamber of Commerce estimates that the 19th District lost out on more than $350 million as a result of the undercounting of Florida's population. Fla. Chamber Fdn., *Florida is Missing Billions of Dollars: The Cost of the 2020 Census Undercount by County*, https://perma.cc/BY6D-Z85U.

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3. Florida Redistricting is a public information website created by the Florida Legislature for the purpose of informing the public on information related to the 2022 redistricting cycle.

160. Florida's 15th Congressional district contains a large portion of Hillsborough County, some of Pasco County, and a sliver of Polk County. Florida Senate, *2022-2032 Florida Congressional Districts* (Apr. 22, 2022), https://perma.cc/UMY5-JBUX.

161. After the 2020 census, all three of these counties' populations increased.

162. The population of Hillsborough County increased by 15%–20%. Florida Redistricting[4], *County Population Change Web Map*, https://perma.cc/AKN4-RXCR.

163. The population of Pasco County increased by more than 20%. Florida Redistricting, *County Population Change Web Map*, https://perma.cc/9EYB-ZP4N.

164. The population of Polk County increased by more than 20%. Florida Redistricting, *County Population Change Web Map*, https://perma.cc/WF9W-DAE2.

165. Had Florida been counted correctly in the 2020 census, it is clear that the population of the 15th Congressional district would have increased even more.

166. Federal funding tied to the 15th District's population would have also increased.

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4. Florida Redistricting is a public information website created by the Florida Legislature for the purpose of informing the public on information related to the 2022 redistricting cycle.

167. In total, the Florida Chamber of Commerce estimates that the 15th District lost out on more than $930 million as a result of the undercounting of Florida's population. Fla. Chamber Fdn., *Florida is Missing Billions of Dollars: The Cost of the 2020 Census Undercount by County*, https://perma.cc/BY6D-Z85U.

168. Florida's 14th Congressional district contains a large portion of Hillsborough County, and some of Pinellas County. Florida Senate, *2022-2032 Florida Congressional Districts* (Apr. 22, 2022), https://perma.cc/GVH2-FH3Z.

169. After the 2020 Census, both of these counties' populations increased.

170. The population of Hillsborough County increased by 15%-20%. Florida Redistricting, *County Population Change Web Map*, https://perma.cc/9EYB-ZP4N.

171. The population of Pinellas County increased by 2%-6%. Florida Redistricting, *County Population Change Web Map*, https://perma.cc/9EYBZP4N.

172. Had Florida been accurately counted in the 2020 census, the population of the 14th congressional district would have been even higher.

173. Federal funding tied to the 14th District's population would have also increased.

174. In total, the Florida Chamber of Commerce estimates that the 14th District lost out on more

than $300 million as a result of the undercounting of Florida's population. Fla. Chamber Fdn., *Florida is Missing Billions of Dollars: The Cost of the 2020 Census Undercount by County*, https://perma.cc/BY6D-Z85U.

175. Additionally, Florida uses census-based federal grant allocations to distribute funds among congressional districts.

176. Had the census yielded an accurate count for Florida, the congressional map would have been different, and funding allocations would have also changed.

Informational Injury: Member of Congress

177. Representative Donalds relies on accurate census data to fulfill his constitutional duty of representation on behalf of the people of Florida and specifically the residents of the 19th Congressional district.

178. Representative Donalds uses census data to inform his votes in the House of Representatives.

179. For example, Representative Donalds cast votes concerning the HUBZone small business program, which bases its eligibility, in part, on census data.

180. Many other competitive grants rely upon census data for adequate and accurate distribution of funds, and Representative Donalds engages with these facts and figures in informing his vote.

181. Additionally, Representative Donalds depends on accurate census data to inform his constituent services and relations.

182. Many local funding programs, such as SNAP, certain Medicare and Medicaid programs, and FEMA monies, are dependent on census data to set eligibility requirements.

183. Representative Donalds and his office can only adequately advise constituents if they are given accurate information.

184. Defendants harmed Representative Donalds by failing to provide him with accurate data on which he relies to fulfill his constitutional duty.

CLAIMS FOR RELIEF

COUNT I
Violation of U.S. Const. art. I, § 2, cl. 3, *see* Pub. L. No. 105-119, § 209

185. Plaintiffs reallege their allegations contained in paragraphs 1 through 181 as set forth herein.

186. Pub. L. No. 105-119, § 209(b) provides that "[a]ny person aggrieved by the *use* of any statistical method in violation of the Constitution or any provision of law . . . in connection with the 2000 or any later decennial Census, to determine the population for purposes of the *apportionment* or *redistricting* of Members in Congress,

may in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method." (emphasis added).

187. The U.S. Constitution requires a decennial "actual Enumeration" of the population for purposes of apportionment. U.S. Const. art. I, § 2, cl. 3.

188. As alleged above, Defendants' extensive reliance on statistical methods in conducting the 2020 Census and producing its results violated the Constitution's mandate to conduct an "actual Enumeration." The unprecedented scope and manner of Defendants' use of statistical techniques went beyond permissible data supplementation and effectively substituted statistical modeling for a true enumeration of the population.

189. By reason of the foregoing, Plaintiffs are entitled to a declaratory judgment that the 2020 Census apportionment data and tabulation as reported to the President, *see* 13 U.S.C. §141(b) violated Article I, § 2 of the U.S. Constitution.

190. Plaintiffs are also entitled to mandatory relief that obligates the Defendants to correct the 2020 apportionment data and tabulation to account for the 18.8 million omissions by means of direct contact and, accordingly, update the P.L. 94-171 redistricting data and redistribute that data to the states.

COUNT II
Violation of 13 U.S.C. § 141(a),
***see* Pub. L. No. 105-119, § 209**

191. Plaintiffs reallege their allegations contained in paragraphs 0–181 as set forth herein.

192. Pub. L. No. 105-119, § 209(b) provides that "[a]ny person aggrieved by the *use* of any statistical method in violation of the Constitution or any provision of law . . . in connection with the 2000 or any later decennial Census, to determine the population for purposes of the *apportionment* or *redistricting* of Members in Congress, may in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method." (emphasis added).

193. The Secretary's extensive reliance upon imputation in producing the apportionment results and tabulation of total population to the President went beyond the Secretary's authority in 13 U.S.C. § 141(a) and was a clear abuse of discretion.

194. By reason of the foregoing, Plaintiffs are entitled to a declaratory judgment that the Secretary exceeded his authority under 13 U.S.C. 141(a) and that the 2020 Census apportionment data and tabulation as reported to the President, *see* 13 U.S.C. §141(b), are inaccurate.

195. Plaintiffs are also entitled to mandatory relief that obligates the Defendants to correct the 2020

apportionment data and tabulation to account for the 18.8 million omissions by means of direct contact and, accordingly, update the P.L. 94-171 redistricting data and redistribute that data to the states.

COUNT III
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)[5] (Use of Statistical Methods, Contrary to U.S. Const. art. I, § 2, cl. 3)

196. Plaintiffs reallege their allegations contained in paragraphs 0–181 as set forth herein.

197. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, . . . or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

198. Defendants' extensive use of statistical methods in conducting the 2020 Census was not "in accordance with the law."

199. The U.S. Constitution requires a decennial "actual Enumeration" of the population for purposes of apportionment. U.S. Const. art. I, § 2, cl. 3.

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5. Plaintiffs maintain that claims under Pub. L. No. 105-119, § 209 are a form of special statutory review proceeding under 5 U.S.C. § 703 and are therefore APA claims. *See* Pub. L. No. 105-119, § 209 (discussing "final agency action"); 5 USC § 704 (making final agency action reviewable under the APA). To the extent the Panel disagrees, Plaintiffs bring standalone APA claims in the alternative.

200. As alleged above, Defendants' extensive use of statistical methods in conducting the 2020 Census and producing the results violated the constitutional mandate to conduct an "actual Enumeration" because Defendants' unprecedented use of statistical methods rose to the level of substituting for enumeration.

201. The 2020 Census Operational Plan 5.0 is final agency action and reviewable by this Panel. Pub. L. No. 105-119, § 209(c)(2).

202. By reason of the foregoing, Plaintiffs are entitled to a declaratory judgment that the 2020 Census apportionment data and tabulation as reported to the President, *see* 13 U.S.C. §141(b) violated Article I, § 2 of the U.S. Constitution.

203. Plaintiffs are also entitled to mandatory relief that obligates the Defendants to correct the 2020 apportionment data and tabulation to account for the 18.8 million omissions by means of direct contact and, accordingly, update the P.L. 94-171 redistricting data and redistribute that data to the states.

COUNT IV
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C) (Use of statistical methods was contrary to 13 U.S.C. § 141(a))

204. Plaintiffs reallege their allegations contained in paragraphs 0–181 as set forth herein.

205. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, . . . or otherwise not in accordance with law" or "in excess of statutory jurisdiction." 5 U.S.C. § 706(2)(A), (C).

206. Defendants' extensive use of imputation was contrary to law and in excess of statutory limitations.

207. The Secretary's extensive reliance upon imputation in producing the apportionment results and tabulation of total population to the President went beyond the Secretary's authority in 13 U.S.C. § 141(a) and was unlawful.

208. By reason of the foregoing, Plaintiffs are entitled to a declaratory judgment that the Secretary exceeded his authority under 13 U.S.C. 141(a) and that the 2020 Census apportionment data and tabulation as reported to the President, *see* 13 U.S.C. §141(b), are inaccurate.

209. Plaintiffs are also entitled to mandatory relief that obligates the Defendants to correct the 2020 apportionment data and tabulation to account for the 18.8 million omissions by means of direct contact and, accordingly, update the P.L. 94-171 redistricting data and redistribute that data to the states.

COUNT V
Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C), (D) (Use of statistical methods was arbitrary and capricious)

210. Plaintiffs reallege their allegations contained in paragraphs 0–181 as set forth herein.

211. Under the APA, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, . . . or otherwise not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations," or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A).

212. The decision of Defendants to use imputation to the extent that they did when faced with unprecedented gaps in data due to the COVID-19 pandemic was arbitrary and capricious and violated the reason-giving requirements of the APA. 5 U.S.C. § 706.

213. Defendants' use of imputation altered the actual enumeration by adding to and subtracting from population counts based on statistical inference rather than an actual enumeration. Pub. L. No. 105-119, § 209(h)(1).

214. This decision was arbitrary and capricious.

215. The 2020 Census Operational Plan 5.0 is final agency action and reviewable by this Panel. Pub. L. No. 105-119, § 209(c)(2).

216. By reason of the foregoing, Plaintiffs are entitled to a declaratory judgment that the Defendants' actions were arbitrary and capricious under 13 U.S.C. 141(a) and that the 2020 Census apportionment data and tabulation as reported to the President, *see* 13 U.S.C. §141(b), are inaccurate.

217. Plaintiffs are also entitled to mandatory relief that obligates the Defendants to correct the 2020 apportionment data and tabulation to account for the 18.8 million omissions by means of direct contact and, accordingly, update the P.L. 94-171 redistricting data and redistribute that data to the states.

DEMAND FOR A THREE-JUDGE PANEL

WHEREFORE, Plaintiffs demand judgment against Defendants HOWARD LUTNICK, GEORGE COOK, and THE UNITED STATES OF AMERICA as follows:

(a) Convene a three-judge district court pursuant to Pub. L. No. 105-119, § 209(e)(1) and 28 U.S.C. § 2284;

(b) Issue a declaratory judgment that:

1. The apportionment tabulation of total population transmitted to the President following the 2020 decennial census was produced unlawfully using statistical methods and therefore violated the Constitution and federal law;

2. The Pub. L. No. 94-171 redistricting data files delivered to the states from the 2020 decennial census were unlawfully produced using statistical methods and thereby violated the Constitution and federal law;

3. The 2020 Census apportionment violates the U.S. Constitution and federal law;

(c) Issue mandatory relief:

1. Obligating Defendants to prepare and send to the President corrected or supplemental apportionment data and tabulation that excludes population data that was substituted with results derived primarily from statistical methods and is otherwise a constitutionally compliant actual enumeration.

2. Obligating Defendants to prepare and publish a corrected or supplemental Pub. L. No. 94-171 redistricting file dataset for the 2020 Census that excludes population data that was substituted with results derived primarily from statistical methods and is otherwise a constitutionally compliant actual enumeration.

(d) Award Plaintiffs' costs and attorneys' fees as appropriate; and

(e) Grant such other and further relief as this Court deems just and proper.

DATED: February 17, 2026

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APPENDIX D — CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Const. art. I, § 2, cl. 3

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

* * *

U.S. Const. amend. XIV, § 2

Section 2

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

* * *

Pub. L. 105-119 § 209, 111 Stat. 2440, 2480 (1997)

(a) Congress finds that—

(1) it is the constitutional duty of the Congress to ensure that the decennial enumeration of the population is conducted in a manner consistent with the Constitution and laws of the United States;

(2) the sole constitutional purpose of the decennial enumeration of the population is the apportionment of Representatives in Congress among the several States;

(3) section 2 of the 14th article of amendment to the Constitution clearly states that Representatives are to be "apportioned among the several States according to their respective numbers, counting the whole number of persons in each State";

(4) article I, section 2, clause 3 of the Constitution clearly requires an "actual Enumeration" of the population, and section 195 of title 13, United States Code, clearly provides "Except for the determination of population for purposes of apportionment of Representatives in Congress among the several States, the Secretary shall, if he considers it feasible, authorize the use of the statistical method known as 'sampling' in carrying out the provisions of this title.";

(5) the decennial enumeration of the population is one of the most critical constitutional functions our Federal Government performs;

(6) it is essential that the decennial enumeration of the population be as accurate as possible, consistent with the Constitution and laws of the United States;

(7) the use of statistical sampling or statistical adjustment in conjunction with an actual enumeration to carry out the census with respect to any segment of the population poses the risk of an inaccurate, invalid, and unconstitutional census;

(8) the decennial enumeration of the population is a complex and vast undertaking, and if such enumeration is conducted in a manner that does not comply with the requirements of the Constitution or laws of the United States, it would be impracticable for the States to obtain, and the courts of the United States to provide, meaningful relief after such enumeration has been conducted; and

(9) Congress is committed to providing the level of funding that is required to perform the entire range of constitutional census activities, with a particular emphasis on accurately enumerating all individuals who have historically been undercounted, and toward this end, Congress expects—

(A) aggressive and innovative promotion and outreach campaigns in hard-to-count communities;

(B) the hiring of enumerators from within those communities;

(C) continued cooperation with local government on address list development; and

(D) maximized census employment opportunities for individuals seeking to make the transition from welfare to work.

(b) Any person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law (other than this Act), in connection with the 2000 or any later decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress, may in a civil action obtain declaratory, injunctive, and any other appropriate relief against the use of such method.

(c) For purposes of this section—

(1) the use of any statistical method as part of a dress rehearsal or other simulation of a census in preparation for the use of such method, in a decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress shall be considered the use of such method in connection with that census; and

(2) the report ordered by title VIII of Public Law 105–18 and the Census 2000 Operational Plan shall be deemed to constitute final agency action regarding the use of statistical methods in the 2000 decennial census, thus making the question of their use in such census sufficiently concrete and final to now be reviewable in a judicial proceeding.

(d) For purposes of this section, an aggrieved person (described in subsection (b)) includes—

(1) any resident of a State whose congressional representation or district could be changed as a result of the use of a statistical method challenged in the civil action;

(2) any Representative or Senator in Congress; and

(3) either House of Congress.

(e)(1) Any action brought under this section shall be heard and determined by a district court of three judges in accordance with section 2284 of title 28, United States Code. The chief judge of the United States court of appeals for each circuit shall, to the extent practicable and consistent with the avoidance of unnecessary delay, consolidate, for all purposes, in one district court within that circuit, all actions pending in that circuit under this section. Any party to an action under this section shall be precluded from seeking any consolidation of that action other than is provided in this paragraph. In selecting the district court in which to consolidate such actions, the chief judge shall consider the convenience of the parties and witnesses and efficient conduct of such actions. Any final order or injunction of a United States district court that is issued pursuant to an action brought under this section shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under this section may be issued by a single Justice of the Supreme Court.

(2) It shall be the duty of a United States district court hearing an action brought under this section and

the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any such matter.

(f) Any agency or entity within the executive branch having authority with respect to the carrying out of a decennial census may in a civil action obtain a declaratory judgment respecting whether or not the use of a statistical method, in connection with such census, to determine the population for the purposes of the apportionment or redistricting of Members in Congress is forbidden by the Constitution and laws of the United States.

(g) The Speaker of the House of Representatives or the Speaker's designee or designees may commence or join in a civil action, for and on behalf of the House of Representatives, under any applicable law, to prevent the use of any statistical method, in connection with the decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress. It shall be the duty of the Office of the General Counsel of the House of Representatives to represent the House in such civil action, according to the directions of the Speaker. The Office of the General Counsel of the House of Representatives may employ the services of outside counsel and other experts for this purpose.

(h) For purposes of this section and section 210—

(1) the term "statistical method" means an activity related to the design, planning, testing, or implementation of the use of representative

sampling, or any other statistical procedure, including statistical adjustment, to add or subtract counts to or from the enumeration of the population as a result of statistical inference; and

(2) the term ''census'' or ''decennial census'' means a decennial enumeration of the population.

(i) Nothing in this Act shall be construed to authorize the use of any statistical method, in connection with a decennial census, for the apportionment or redistricting of Members in Congress.

(j) Sufficient funds appropriated under this Act or under any other Act for purposes of the 2000 decennial census shall be used by the Bureau of the Census to plan, test, and become prepared to implement a 2000 decennial census, without using statistical methods, which shall result in the percentage of the total population actually enumerated being as close to 100 percent as possible. In both the 2000 decennial census, and any dress rehearsal or other simulation made in preparation for the 2000 decennial census, the number of persons enumerated without using statistical methods must be publicly available for all levels of census geography which are being released by the Bureau of the Census for: (1) all data releases before January 1, 2001; (2) the data contained in the 2000 decennial census Public Law 94–171 data file released for use in redistricting; (3) the Summary Tabulation File One (STF–1) for the 2000 decennial census; and (4) the official populations of the

States transmitted from the Secretary of Commerce through the President to the Clerk of the House used to reapportion the districts of the House among the States as a result of the 2000 decennial census. Simultaneously with any other release or reporting of any of the information described in the preceding sentence through other means, such information shall be made available to the public on the Internet. These files of the Bureau of the Census shall be available concurrently to the release of the original files to the same recipients, on identical media, and at a comparable price. They shall contain the number of persons enumerated without using statistical methods and any additions or subtractions thereto. These files shall be based on data gathered and generated by the Bureau of the Census in its official capacity.

(k) This section shall apply in fiscal year 1998 and succeeding fiscal years.

* * *

13 U.S.C. § 141 – Population and other census information

(a) The Secretary shall, in the year 1980 and every 10 years thereafter, take a decennial census of population as of the first day of April of such year, which date shall be known as the "decennial census date", in such form and content as he may determine, including the use of sampling procedures and special surveys. In connection with any such census, the Secretary is authorized to obtain such other census information as necessary.

(b) The tabulation of total population by States under subsection (a) of this section as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.

(c) The officers or public bodies having initial responsibility for the legislative apportionment or districting of each State may, not later than 3 years before the decennial census date, submit to the Secretary a plan identifying the geographic areas for which specific tabulations of population are desired. The statute provides procedures to govern disputes over these plans, omitted from this version. Tabulations of population for the areas identified in any plan approved by the Secretary shall be completed by him as expeditiously as possible after the decennial census date and reported to the Governor of the State involved and to the officers or public bodies having responsibility for legislative apportionment or districting of such State, except that such tabulations of population of each State requesting a tabulation plan, and basic tabulations of population of each other State, shall, in any event, be completed, reported, and transmitted to each respective State within one year after the decennial census date.

* * *

28 U.S.C. § 1658 – Time limitations on the commencement of civil actions arising under Acts of Congress

(a) Except as otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues.

(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

(1) 2 years after the discovery of the facts constituting the violation; or

(2) 5 years after such violation.

* * *

Appendix D

28 U.S.C. § 2401 – Time for commencing action against United States

(a) Except as provided by chapter 71 of title 41, every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues. The action of any person under legal disability or beyond the seas at the time the claim accrues may be commenced within three years after the disability ceases.

(b) A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.