

No. 26-205

IN THE

Supreme Court of the United States

UNIVERSITY OF SOUTH FLORIDA COLLEGE
REPUBLICANS, *et al.*,

Appellants,

v.

HOWARD W. LUTNICK, SECRETARY OF
COMMERCE, *et al.*,

Appellees.

**On Appeal from the United States District
Court for the Middle District of Florida**

**INTERVENORS-APPELLEES ALLIANCE FOR
RETIRED AMERICANS, MANUEL GUERRERO,
AND CAMERON DRIGGERS'S MOTION TO
AFFIRM**

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QUESTIONS PRESENTED

1. Whether Florida-based plaintiffs have Article III standing to challenge the Census Bureau’s use of statistical methods during the 2020 Census in a lawsuit filed five years later, where those methods only increased Florida’s actual and relative population.
2. Whether plaintiffs suing federal defendants under a cause of action enacted in 1997 are subject to 28 U.S.C. § 1658(a)’s requirement that suits under post-1990 causes of action “may not be commenced later than 4 years after the cause of action accrues” unless “otherwise provided by law,” or whether 28 U.S.C. § 2401(a)’s six-year bar for suits against the United States extends that period.

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, Intervenor-Appellee Alliance for Retired Americans states that it has no parent corporation and that no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

As attention turns to the 2030 Census, now less than four years away, Appellants persist in litigating this belated challenge to the 2020 results, based on a theory largely grounded in the *sui generis* effects of the COVID-19 pandemic. The three-judge court properly dismissed Appellants' claims on threshold grounds, and the case raises no issue of recurring importance justifying plenary review.

Abandoning their other causes of action, Appellants now exclusively defend their claims under Section 209 of Pub. L. No. 105-119, for the "use of any statistical method in violation of the Constitution or any provision of law." The statistical method that they challenge is imputation. But as data cited in the Complaint make clear, 3.6% of Florida's population in the 2020 Census was added by imputation, compared to a nationwide rate of 3.4%, so imputation *raised* Florida's actual and relative population. App.29a. The alleged Florida undercount on which Appellants' asserted injuries turn therefore cannot be traced to the use of imputation that Appellants challenge, and an order excluding imputed population would only worsen their alleged injuries. That is the opposite of *Utah v. Evans*, 536 U.S. 452 (2002), where all agreed that excluding imputed population would have given Utah another seat.

Perhaps because the imputation they challenge helped rather than hurt them, Appellants complain that efforts at actual enumeration—door knocking, mailing, and the like—were inadequate during the

COVID-19 pandemic. But changes to the Bureau's direct enumeration efforts were nationwide, and Appellants offered no factual allegations plausibly connecting them to Florida's alleged relative shortfall, as would be necessary for Appellants' injuries to be traceable to those changes. Nor did Appellants ever explain what could be done now to redress injuries from inadequate actual enumeration six years ago, when millions of people have since been born, died, and moved, and when a new apportionment would demand yet another round of redistricting this decade in states across the country.

The three-judge court therefore properly dismissed for lack of standing, in a decision that turned on the unusual facts of this case and on Appellants' extraordinary delay in bringing it. And the court also properly held in the alternative that Appellants' claims are time-barred, rejecting Appellants' surprising argument that 28 U.S.C. § 2401(a), which bars late lawsuits against the government, instead serves to extend the time within which the government may be sued.

There is no need or reason for plenary review of either of the two independently sufficient bases for the three-judge court's judgment. The Court should summarily affirm.

COUNTERSTATEMENT OF THE CASE

I. Legal Background and the 2020 Census

“The Constitution requires an ‘actual Enumeration’ of the population every 10 years and vests Congress with the authority to conduct that census ‘in such Manner as they shall by law direct.’” *Wisconsin v. City of New York*, 517 U.S. 1, 5 (1996) (quoting U.S. Const. art. I, § 2, cl. 3). In a country as large as ours, that is no simple matter, and “no census is recognized as having been wholly successful in achieving that goal.” *Id.* at 6. Every decade since the founding, “[p]ersons who should have been counted are not counted at all or are counted at the wrong location; persons who should not have been counted . . . are counted; and persons who should have been counted only once are counted twice.” *Id.* “It is thought that these errors have resulted in a net ‘undercount’ of the actual American population in every decennial census.” *Id.*

In 1997, Congress created a cause of action to allow courts to adjudicate disputes over the lawfulness of statistical methods the Census Bureau uses to address these persistent issues. Section 209 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act permits “any person aggrieved by the use of any statistical method in violation of the Constitution or any provision of law” to bring a civil action against the officials responsible for conducting the census, and to obtain “declaratory, injunctive, and any other appropriate relief” against the challenged method. Pub. L. No. 105-119, § 209(b), 111 Stat. 2440, 2481 (1997). Section 209 is thus a vehicle for judicial review, not itself a

source of substantive law: a plaintiff invoking it must identify a statistical method that violates some independent provision of the Constitution or federal law. Congress also specified that post-census relief is generally “impracticable.” *Id.* § 209(a)(8). In *Utah v. Evans*, the Court adjudicated a claim under Section 209 and upheld the Bureau’s use of imputation to supplement enumeration efforts after “efforts to reach each individual” directly have been exhausted. 536 U.S. at 477.

Appellants allege that the COVID-19 pandemic made the persistent undercounting problems worse. “The 2020 Census,” they say in the first paragraph of their operative complaint, “was materially and fundamentally different from any previous census as a result of the COVID-19 pandemic.” App.79a (Compl. ¶ 1). They complain that, “[b]ecause of the COVID-19 pandemic, the Census Bureau suspended normal procedures and employed new data collection and processing methodologies.” App.88a (Compl. ¶ 49); *see also* App.88a–91a (Compl. ¶¶ 50–62) (listing specific changes). Appellants allege that these changes were either excessive or inadequate—it is not entirely clear which—and that as a result, the Bureau “failed to fulfill the fundamental task of seeking to reach each individual household in the 2020 Census.” App.91a (Compl. ¶ 65) (cleaned up). And they allege that the Bureau attempted to make up for this failure by adding to the count using “more imputation, which led to inaccurate results.” App.98a (Compl. ¶ 96); *see also* App.92a–98a (Compl. ¶¶ 69–95).

In support of these allegations, Appellants focus on the Bureau’s Post-Enumeration Survey (PES), “which admittedly use[d] statistical sampling,” App.94a (Compl. ¶ 79), to estimate that 18.8 million people were “omitted” from the initial count by direct enumeration, App.92a (Compl. ¶ 68). But, partially offsetting that, the PES also reported that “10.9 million people, or 3.4% of the population, were imputed through whole-person imputation.” App.94a–95a (Compl. ¶ 79). Imputation therefore reduced any undercount by adding population. And imputation particularly helped Florida, where 3.6% of the population was added by imputation as compared to the national rate of 3.4%. App.29a; *see* App.102a (Compl. ¶ 115) (relying on and therefore incorporating by reference the relevant Census Bureau report). Thus, while Appellants complain that the PES found Florida was undercounted by 3.48%, App.102a (Compl. ¶ 115), the problem would have been worse, not better, without imputation.

The 2020 Census was conducted largely during the first Trump Administration. Population was enumerated as of April 1, 2020. 13 U.S.C. § 141(a). Field operations ended on October 15, 2020,¹ after this Court stayed a district court injunction that would have required the Bureau to continue them, *see Ross v. Nat’l Urban League*, 592 U.S. 994 (2020). State and national population totals were reported on April 26,

¹ *See* Press Release, U.S. Census Bureau, Census Bureau Statement on 2020 Census Data Collection Ending (Oct. 13, 2020), <https://perma.cc/Z77E-8ZWV>.

2021, and the detailed redistricting data set was released on August 12, 2021. App.8a. The PES was issued in the spring of 2022. App.97a (Compl. ¶ 91).

II. Procedural History

Appellants are several Florida-based, Republican Party-affiliated groups, three individual Florida voters, and U.S. Representative Byron Donalds in his official capacity. *See* App.82a–83a. Representative Donalds currently represents Florida’s 19th congressional district, App.83a, although he is not running for reelection and his term will end early next year, *see Candidate Listing for 2026 General Election*, Fla. Dep’t of State (last visited Oct. 5, 2026), <https://perma.cc/YGL4-LHXQ>.

Appellants filed their initial complaint on September 15, 2025, almost five years after the end of field operations for the 2020 Census, and almost four-and-a-half years after the Bureau released data showing the state-by-state population figures used for apportionment. Dkt. No. 1.² They filed their first amended complaint that same day, and a second amended complaint two months later. Dkt. Nos. 2, 43. Meanwhile, Chief Judge Pryor convened a three-judge court under 28 U.S.C. § 2284(a) and Section 209(e)(1) of Pub. L. No. 105-119 (1997), App.10a n.5, which granted Intervenor-Appellees’ motion to intervene, Dkt. No. 55.

² As used in this Motion, “Dkt. No.” refers to the ECF document number on the district court docket, No. 8:25-cv-02486 (M.D. Fla.).

Appellants’ first three complaints relied only on Section 209 as their cause of action and focused narrowly on the Bureau’s use of two particular statistical methods: “differential privacy,” which injected noise into certain data points to protect sensitive personal information, and “group quarters imputation,” which estimated the population for certain group housing facilities like dormitories and nursing homes. Dkt. No. 43 ¶¶ 37–73. Appellants alleged that the use of these methods had cost Florida two House seats and Electoral College votes. *Id.* ¶ 77.

On February 3, 2026, the three-judge court granted Intervenor’s motion to dismiss the second amended complaint as time-barred. The court held that Appellants’ Section 209 claims were subject to the four-year limitations period in 28 U.S.C. § 1658, which “provides a default statute of limitations for ‘civil action[s] arising under an Act of Congress enacted after’ December 1, 1990.” Dkt. No. 84 at 10 (quoting 28 U.S.C. § 1658(a)). The court noted that “Plaintiffs don’t argue that a different statute of limitations displaces Section 1658’s four-year default.” *Id.* And it held that Appellants’ claims accrued at the latest on August 12, 2021, when the Bureau released granular redistricting data reflecting its use of the challenged procedures. *Id.* at 10–18. But the court granted leave to amend, *id.* at 19, and Judge Merryday concurred to suggest that Appellants might be able to plead facts supporting a claim for prospective relief related to the 2030 Census, *id.* at 20–27.

Rather than take the hint, Appellants filed the operative Third Amended Complaint, which exclusively

targeted the 2020 Census and dropped any challenge for 2030. *See* App.78a–124a. At the same time, however, the Third Amended Complaint fundamentally changed the substantive basis for Appellants’ claims. Appellants dropped their challenge to differential privacy and group quarters imputation. By then, Appellants’ own experts had admitted that neither challenged method did what Appellants had alleged. *See* Dkt. Nos. 78, 78-2 & 78-3. Instead, the Third Amended Complaint targeted imputation generally, alleging that the Bureau had done too much imputation in computing the 2020 results. App.100a (Compl. ¶ 103). And, in an effort to address the statute of limitations problem that had led to the dismissal of their prior complaint, Appellants added claims under the Administrative Procedure Act and against the United States, which they then argued were subject only to the longer, six-year limitations period in 28 U.S.C. § 2401(a). App.79a.

On July 7, 2026, the three-judge court dismissed the Third Amended Complaint—this time, with prejudice. App.1a–75a. The court held that Appellants lack standing because they failed to allege facts plausibly tracing Florida’s alleged undercount, from which Appellants’ alleged injuries flowed, to the use of imputation that Appellants challenged. App.15a–17a. Nor, the court continued, were Appellants’ injuries redressable by the declaratory and injunctive relief Appellants sought. App.17a–30a. The court also rejected informational injuries that Appellants no longer press on appeal. App.27a–30a, 36a–38a. In the alternative, the court held that Appellants did not challenge final agency action, App.58a, that they could not replead

their Section 209 claims under the APA because Section 209 itself provided an “other adequate remedy,” App.38a–46a, and that Appellants’ Section 209 claims remained barred by 28 U.S.C. § 1658’s four-year statute of limitations, App.49a–54a. The court therefore dismissed Appellants’ claims with prejudice, App.58a–59a, over a dissent from Judge Merryday, App.62a–75a.

ARGUMENT

I. The three-judge court properly held that Appellants lack standing.

The three-judge court correctly dismissed the case for lack of standing, in a fact-bound decision that does not merit this Court’s plenary review. In particular, while Appellants alleged an injury—a lost House seat due to an alleged undercount of Florida’s population—they did not allege any facts tracing that injury to the use of imputation that they challenge, nor any basis for believing that their injury could be redressed by the relief that they seek at this late date. Rather, in sharp contrast to *Evans*, where simply eliminating imputed population would have raised Utah’s relative population enough to give it an extra seat, *see* 536 U.S. at 458, imputation increased Florida’s actual and relative population, meaning that eliminating imputed population alone would leave Appellants no better off, and potentially worse off, *see* App.29a. Redressing Appellants’ alleged injuries would therefore require new retroactive efforts at enumeration, not a mere revision to the Bureau’s calculations—and it is far too late to revise the count and reapportion in any event.

A. Appellants failed to allege that the challenged conduct caused their alleged injury.

Standing requires factual “allegations plausibly suggesting (not merely consistent with)” causation. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Utah met that standard in *Evans* by showing that the challenged form of imputation had “increased North Carolina’s population by 0.4% while increasing Utah’s population by only 0.2%,” which “the parties agree[d]” meant that Utah received “one less Representative[] than if the Bureau had not used imputation” in the challenged way. 536 U.S. at 458. Appellants made no comparable allegations here.

Appellants rely on the PES’s estimated “3.48% undercount” of Florida’s population, which they say cost Florida a House seat. App.80a, 102a, 108a (Compl. ¶¶ 4, 115, 143, 144). But they do not allege that the undercount *itself* is unlawful—after all, there has never been a perfect census, and “[i]t is thought that . . . errors have resulted in a net ‘undercount’ of the actual American population in every decennial census.” *Wisconsin*, 517 U.S. at 6. What Appellants say is unlawful is the Census Bureau’s use of imputation to fill alleged gaps in the Bureau’s direct data collection efforts. App.115a–117a, 119a, 120a (Compl. ¶¶ 188, 193, 198, 206, 212). And as the three-judge court explained, Appellants alleged no facts plausibly suggesting that the use of imputation caused Florida’s undercount. App.17a. If anything, the three-judge court rightly explained, the Census Bureau documents on which Appellants relied suggested that Florida had

benefited, with 3.6% of Florida’s population added by imputation compared to 3.4% nationwide. App.17a.

Appellants insist that they “allege many facts supporting th[e] conclusion that if ‘the Bureau [had] done an actual enumeration’ rather than imputation, Florida would have gained a seat.” JS 17 (quoting App.103a) (second alteration in original). But the cited pages—App.102a to 104a—utterly fail to substantiate that statement. They allege that, according to the PES, Florida was undercounted and certain other states were overcounted. *See* App.102a–104a; *see also* JS 21–24 (similar). But the PES “cannot answer why a particular state may have experienced” an undercount. App.98a (quoting *2020 Census: Coverage Errors and Challenges Inform 2030 Plans*, U.S. Gov’t Accountability Off. (Nov. 21, 2024), <https://perma.cc/9J82-LBWK>). And Appellants nowhere allege facts supporting the conclusion that the undercounts were *caused by* the use of imputation or by inadequate efforts at enumeration. The only support for that key point is the conclusory statement in Paragraph 119 that, “[h]ad the Bureau done an actual enumeration *and yielded accurate results*, the priority values would have changed.” App.103a (emphasis added). That statement simply *assumes* that unspecified additional efforts at direct enumeration would have increased accuracy—but neither it nor anything else in the Complaint provides any factual basis to render that assumption plausible.

Appellants’ argument that they do not challenge imputation standing alone, but rather “imputation instead of an actual enumeration,” does not solve the

problem. JS 21 (emphasis omitted). It remains the case that the imputation Appellants challenge *increased* Florida’s relative population, so eliminating it as Appellants demand would in the first instance put Florida further behind. Appellants therefore needed to allege facts showing that, if the Bureau had made additional, unspecified efforts at direct enumeration, those efforts would have added more to Florida’s population than the 3.6% added by imputation that Appellants would have the Bureau remove. Moreover, they needed to allege that those same unspecified efforts would not have added even more people to the populations of other states. The Complaint is entirely devoid of any factual allegations like that. It does not say that the Bureau did less direct enumeration in Florida than other states—it alleges nationwide policy changes. App.88a–91a (Compl. ¶¶ 48–65). It does not identify any particular additional direct enumeration efforts that it believes would have disproportionately increased Florida’s population. It offers nothing at all. And this Court’s precedent makes clear that Appellants’ assumption is far from obvious, because the Bureau has historically used “imputation in an effort to achieve *greater* accuracy,” by using “information it has” to estimate population rather than using a “figure of zero” that the Bureau knows is likely to be wrong. *Evans*, 536 U.S. at 478 (emphasis added).

The three-judge court therefore rightly rejected Appellants’ allegations as insufficient to trace their alleged injury to the conduct they say is unlawful, not by “drawing mistaken inferences against Plaintiffs,” JS 20, but by applying well-established pleading standards. “It is the conclusory nature of [Appellants’]

allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). The court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* at 678 (quoting *Twombly*, 550 U.S. at 555). And certainly such conclusory and speculative allegations are not enough to entitle Appellants to “‘explanation and exploration on a full record’ in ‘a full adversary hearing.’” JS 23 (quoting App.67a (Merryday, J., dissenting)). “Rule 8 . . . does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” *Iqbal*, 556 U.S. at 678–79.

Appellants’ theory of causation is also implausible. Appellants’ own allegations reveal an “obvious alternative explanation” for the alleged undercount, *Twombly*, 550 U.S. at 567: challenges caused by COVID-19. Appellants allege at great length that “the COVID-19 pandemic and other long-standing challenges potentially affected the accuracy of 2020 Census counts.” App.98a (citation omitted). And they repeatedly attribute difficulties in taking the 2020 Census to COVID-19; the Third Amended Complaint repeats the phrase “Because of the COVID-19 pandemic” no fewer than fourteen times. App.88a–90a. Under the circumstances, Appellants needed to allege some basis for believing that the alternative to imputation was “more enumeration”—and disproportionately more enumeration specifically in Florida—rather than leaving uncounted residents out of the count altogether. Yet Appellants nowhere say what, con-

cretely, they think the Bureau should have done differently, or how it could have done more enumeration given COVID-19.

Appellants’ allegations thus make clear that imputation *increased* Florida’s actual and relative population count, and they provide no basis for concluding that removing the imputed population and replacing it with additional enumeration efforts would have done anything to help Florida. At best, Appellants therefore “can do no more than speculate as to which states might gain and which might lose representation” if the Bureau had done what they asked. *Fed’n for Am. Immigr. Reform v. Klutznick*, 486 F. Supp. 564, 570 (D.D.C. 1980); *see also Citizens for Const. Integrity v. Census Bureau*, 669 F. Supp. 3d 28, 32 (D.D.C. 2023) (“[T]o have standing . . . plaintiffs alleging vote dilution injuries must show that their states would have had an additional representative but for the government’s error.”), *aff’d*, 115 F.4th 618 (D.C. Cir. 2024), *cert. denied*, 145 S. Ct. 2818 (2025). As a result, “none of the plaintiffs are able to allege that the weight of [their] vote” was affected by the Bureau’s use of imputation in 2020. *Klutznick*, 486 F. Supp. at 570.

Finally, Congress’s statement in Section 209(d) that any voter whose representation “could be changed” by the use of a statistical method is “aggrieved” does not change the analysis. Standing is a constitutional requirement, and Congress “may not simply enact an injury into existence, using its law-making power to transform something that is not remotely harmful into something that is.” *TransUnion*

LLC v. Ramirez, 594 U.S. 413, 426 (2021) (quoting *Hagy v. Demers & Adams*, 882 F.3d 616, 622 (6th Cir. 2018)). Nothing Congress enacted can change the fact that the Bureau’s use of imputation cannot possibly have harmed Appellants unless it reduced Florida’s apportionment. The three-judge court properly held that Appellants failed to allege facts showing such causation, and that failure on its own provides reason enough to summarily affirm.³

B. Appellants’ alleged injuries are not judicially redressable.

Appellants’ alleged injuries are also not redressable, for two independently fatal reasons, both related to the fact that the 2020 Census occurred six years ago. First, Appellants never explain how, in 2026, the Bureau is supposed to conduct the “constitutionally compliant actual enumeration” of the population as of April 1, 2020, that they want the federal courts to order, App.122a, nor do they provide any reason to believe that such an enumeration would help them. And second, Appellants fail to show that at this late date, even a new census report that gave Florida a higher relative population would likely lead non-parties to take the steps that would be required to cure Appellants’ alleged apportionment injuries.

³ Appellants have abandoned the funding-based and “informational injury” theories of standing that they argued below. *See* App.109a–114a (Compl. ¶¶ 148–84).

1. Appellants neither explain how the Bureau could do what they ask nor show that it would help them.

Given that simply removing the imputed population from the count—the relief sought in *Evans*, 536 U.S. at 458—would make Appellants’ alleged injuries worse, they have no choice but to ask for more. But what they demand—“an accurate count ‘by means of direct contact,’” JS 17 (quoting App.117a)—no court can now give them. By law, the 2020 Census must be taken as of April 1, 2020. 13 U.S.C. § 141(a); *see also id.* § 141(e)(2) (barring the use of a mid-decade census to determine apportionment). That was more than six years ago, and tens of millions of Americans have since been born, moved, and died. As this Court has recognized, it is hard enough for the Bureau to directly enumerate every American in real time. *See Wisconsin*, 517 U.S. at 6. Appellants do not explain how they want the Bureau to do so retroactively, much less provide any reason to believe that such an effort would be *more* accurate than what the Bureau did in 2020. They therefore offer no reason to believe that a court order could redress their alleged harm.

The closest Appellants come to explaining what they want the courts to do is in paragraphs of their Complaint asking for an injunction requiring “Defendants to correct the 2020 apportionment data and tabulation to account for the 18.8 million omissions by means of direct contact.” App.115a–119a, 121a (Compl. ¶¶ 190, 195, 203, 209, 217). The 18.8 million number represents the PES’s estimate of how many people were omitted from the initial count by census

takers in 2020. *See* App.92a (Compl. ¶ 68). Appellants do not and cannot ask that the 18.8 million number itself be added to the population count, because it is a sampling-derived number, App.94a–95a (Compl. ¶ 79), and this Court has held that statistical sampling cannot be used to determine population for apportionment. *Dep’t of Com. v. U.S. House of Representatives*, 525 U.S. 316, 320 (1999).

Rather, Appellants want the courts to order the Bureau to “direct[ly] contact” the omitted people. Contrary to Appellants’ argument, JS 7, 21, the three-judge court addressed this demand directly—it did not overlook it. App.23a–24a. And the three-judge court rightly pointed out that Appellants did not explain how this could be done. *Id.* The 18.8 million number is a statistical estimate determined by sampling, not a list of names. *See* App.94a–95a (Compl. ¶ 79). The Bureau does not know who the omitted people are or exactly where they lived in 2020, much less where they live now. That is the whole problem. If the Bureau had that information, it would have directly enumerated the omitted people. *See Evans*, 536 U.S. at 457–58, 477–78. It is therefore simply not possible for the Bureau to “count the people it failed to count,” as Appellants now demand. JS 21.

Instead, the only thing the Bureau could possibly do in response to such an order would be to conduct a whole new census, retroactive to six years ago, while somehow correcting for all of the changes caused by the passage of time without thereby introducing more errors than were present the first time around. Even Appellants are not so bold as to seek that relief, and

they offer no argument that it is justified, nor any reason to believe that such a retroactive census would be more accurate than the one that was undertaken in real time. To satisfy Article III, it must be “likely and not merely speculative that the plaintiff’s injury will be remedied by the relief plaintiff seeks in bringing suit.” *Sprint Commc’ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 273–74 (2008) (citation modified) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). Appellants offer nothing to meet that standard.

2. Appellants do not show a revised certificate would likely lead to a reapportionment.

The three-judge court also rightly recognized another redressability problem: even if Appellants could force the Bureau to issue a new set of census results, they do not show that it would likely translate to a new apportionment of House seats. For that to happen, the President would need to “accept[] the new numbers, change[] his calculations accordingly, and issue[] a new reapportionment statement to Congress.” App.26a (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 824 (1992) (Scalia, J., concurring in part and concurring in the judgment)). Appellants’ principal basis for suggesting that will happen is *Evans*, JS 18–19, but as the three-judge court held, the fact that this case comes years later than *Evans*, after every state has already redistricted (some twice) and elected multiple sets of congressional representatives,

fundamentally changes the analysis, making presidential action far more disruptive and therefore more speculative. App.25a–27a.

In allowing a post-census lawsuit, *Evans* emphasized that only “mechanical” recalculation was needed, and that if Utah prevailed, “several months would remain prior to the first post-2000 census congressional election.” 536 U.S. at 463. Just the opposite is true here.⁴ And as the three-judge court also noted, even if the President were to act in pursuit of partisan gain—which the three-judge court did not assume—it is far from clear that the new census report would help the President’s party. App.26a–27a n.12. That would depend on the overall effect of the new census across *all* states, which Appellants do not even allege. *See id.*

C. Appellants did not allege a “procedural injury.”

Perhaps recognizing their meager showings on traceability and redressability, Appellants seek shelter under the more lenient standard this Court has sometimes applied in cases involving “procedural” injury, where an agency skipped a legally required step that was supposed to influence its decisionmaking, and thereafter made a decision harmful to the plaintiff. *Massachusetts v. EPA*, 549 U.S. 497, 517–18 (2007). In such cases, a plaintiff need only show “some

⁴ In responding to this issue, Appellants engage in a sleight of hand, suddenly arguing that they seek only a “corrected report” along the lines of the one sought in *Evans*, JS 18, and ignoring their insistence elsewhere that what they demand is that the Bureau somehow “count the people it failed to count,” JS 21.

possibility that the requested relief will prompt the injury-causing party to reconsider *the decision* that allegedly harmed” the plaintiff, and they do not need “to prove that if [they] had received the procedure the substantive result would have been altered.” *Id.* at 518 (emphasis added). Thus, for example, someone living near a proposed dam “has standing to challenge the licensing agency’s failure to prepare an environmental impact statement, even though he cannot establish with any certainty that the statement will cause the license to be withheld or altered,” because the purpose of the statement is to influence that decision. *Lujan*, 504 U.S. at 572 n.7.

These “procedural injury” cases do not help Appellants because the traceability and redressability problems Appellants face do not flow from an uncertain agency decision that would be influenced by use of the statistical methods they challenge. The Census Bureau does not “decide” how many people live in Florida in the way that a licensing agency “decides” whether to permit a dam. Rather, the Census Bureau *decides on an enumeration methodology and applies it*, and the application of the methodology in the real world then determines what population numbers it yields.

Thus, Section 209(h)(1)’s description of statistical methods as “procedure[s]” is beside the point, because the only agency decision challenged is the choice to adopt those methods—there is no subsequent, uncertain agency decision involved. Unlike in procedural injury cases, Appellants challenge the Bureau’s decision directly—they say the adoption of imputation was unlawful and seek to reverse it. The problem Appellants

face is not that they cannot predict what choice the Bureau would make with more information; the problem is that they fail to allege what effect a different Bureau decision would have had on the results. That is an ordinary failure of standing allegations—it has nothing to do with procedural injury. *See, e.g., FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 390–91 (2024) (holding plaintiffs lacked standing due to a failure to offer evidence tracing alleged economic harm to a challenged regulatory decision).

The three-judge court therefore properly declined to relax the traceability and redressability requirements here. App.33a. And contrary to Appellants’ arguments, *Evans* does not suggest otherwise. In *Evans*, the parties agreed that eliminating imputation would change the population counts so as to yield an additional seat for Utah, so *Evans* did not present the same traceability and redressability problems as Appellants’ claims here. *Evans*, 536 U.S. at 458.

II. The three-judge court correctly held that Appellants’ claims are time-barred.

Even if Appellants could overcome their lack of standing, the three-judge court correctly held in the alternative that their claims are time-barred under the four-year statute of limitations for causes of action created by Congress after 1990. *See* 28 U.S.C. § 1658(a). Congress enacted Section 209, the only cause of action Appellants pursue on appeal, in 1997. Pub. L. No. 105-119, § 209(b), 111 Stat. at 2481; *see* JS 6. By Section 1658’s plain terms, Appellants’ “civil action arising under” Section 209 therefore “may not be commenced later than 4 years after the cause of action

accrues.” 28 U.S.C. § 1658(a). And as the three-judge court explained, Appellants’ claims accrued when the 2020 Census was taken and the results were reported, more than four years before they sued in late 2025.

Appellants do not challenge the three-judge court’s holding that their claims accrued more than four years before they sued. But they argue that their claims are governed instead by 28 U.S.C. § 2401(a)’s provision that “every civil action commenced against the United States shall be barred unless the complaint is filed within six years” of accrual.⁵

The three-judge court properly rejected that argument and held that Section 1658’s four-year limitations period forecloses Appellants’ Section 209 claims. Appellants do not deny their Section 209 claims involve “a civil action arising under an Act of Congress enacted after” December 1, 1990. 28 U.S.C. § 1658(a). Such an action “may not be commenced later than 4 years after the cause of action accrues,” “except as otherwise provided by law.” *Id.* And contrary to Appellants’ arguments, Section 2401(a) does not “otherwise

⁵ In the three-judge court, Appellants also sought to replead their Section 209 claims under the Administrative Procedure Act to avoid application of Section 1658(a), but the court rightly held that such claims were impermissible because Section 209’s cause of action precludes APA relief and because there is no final agency action to review, and Appellants do not challenge that ruling in their Jurisdictional Statement. *See* App.38a–48a, 54a. Appellants also suggested below that their claims accrued within four years of their initial complaint, *see* App.97a (Compl. ¶ 91), but they do not renew that accrual-timing argument here either. Both arguments are therefore forfeited. *See* S. Ct. R. 14.1(a), 18.3.

provide[] by law” because it imposes no obligations that are inconsistent with Section 1658(a)’s four-year limitations period.

Start with the text. Section 2401(a) provides 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 simply “sets an outside time limit on suits against the United States.” *Price v. Bernanke*, 470 F.3d 384, 388 (D.C. Cir. 2006); *see Zuch v. Comm’r of Internal Revenue*, 97 F.4th 81, 103 n.41 (3d Cir. 2024) (collecting cases), *rev’d on other grounds*, 605 U.S. 422 (2025); *Bieneman v. City of Chi.*, 864 F.2d 463, 468 (7th Cir. 1988); *Lavery v. Marsh*, 918 F.2d 1022, 1026 (1st Cir. 1990) (similar).⁶ Section 2401 imposes a six-year *maximum* time to sue. But it does not foreclose application of another, shorter period. Section 1658 and Section 2401 thus may be applied simultaneously: a suit brought within Section 1658’s four-year limitations period *also* satisfies Section 2401’s “bar[]” on suits brought more than

⁶ The cases on which Appellants rely are consistent with this point. *Kendall v. United States*, for instance, considered a predecessor to Section 2401(a) that also set a six-year time limit on claims against the United States. 107 U.S. 123, 125 (1883). The Court interpreted the statute to mean that “[e]very claim . . . is forever barred unless asserted within six years from the time it first accrued.” *Id.* *Kendall* simply confirms that Section 2401(a) sets an outer limit on the United States’ liability—it does not say that it invalidates shorter limitations periods that might extinguish claims before the six-year bar is met.

“six years after the right of action first accrues.” 28 U.S.C. § 2401(a).

Confirming this interpretation, Section 2401(a), “[u]nlike an ordinary statute of limitations, . . . is a jurisdictional condition attached to the government’s waiver of sovereign immunity, and as such must be strictly construed.” *Ctr. for Biological Diversity v. Hamilton*, 453 F.3d 1331, 1334 (11th Cir. 2006) (quotation omitted). Appellants’ contrary argument is profoundly inconsistent with Section 2401(a)’s jurisdictional status.⁷ Because Section 2401(a) is a limited waiver of the United States’ sovereign immunity, it must be “strictly construed, in terms of its scope, in favor of the sovereign.” *Lane v. Pena*, 518 U.S. 187, 192 (1996). To apply Section 2401(a) over Section 1658(a) as Appellants request would *extend* the timeframe to bring claims and thus *expand* the United States’ liability to suit.

Appellants are wrong to suggest that the incipit of Section 2401(a), which exempts suits brought pursuant to “chapter 71 of title 41” from the provision, is inconsistent with reading Section 2401(a) as imposing a maximum deadline only. JS 28. Chapter 71 of title 41 is the Contract Disputes Act of 1978, which sets out a specific process for resolving contract disputes

⁷ Although some courts have held Section 2401(a) is *not* jurisdictional, see *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 145 (2008) (Ginsburg, J., dissenting) (highlighting division among the circuits on this issue), Appellants do not challenge the Eleventh Circuit precedent holding that Section 2401(a) is a jurisdictional limitation that must be strictly construed, see *Ctr. for Biological Diversity*, 453 F.3d at 1334.

against the federal government, complete with its own limitations period. *See* 41 U.S.C. § 7104(a)–(b). Before that Act was enacted, this Court had held that Section 2401(a) governed the accrual and timeliness of contract claims against the federal government in district courts. *See Crown Coat Front Co. v. United States*, 386 U.S. 503, 510 (1967). In adopting a different regime for contract claims, it was therefore entirely natural for Congress to exempt such claims from the statute that had previously governed them. Congress’s choice to do so sheds little light on Section 2401(a)’s significance in other contexts.

In any event, the three-judge court also correctly held that, to the extent there is a conflict between Sections 2401(a) and 1658(a), the latter must prevail. It is well settled that, where two statutes of limitations appear to apply, the “more specific statute displaces” the more general one. *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 808 (2024). Section 2401(a) applies to *every* suit against the United States. Section 1658(a) applies only to suits “arising under an Act of Congress enacted after” December 1, 1990. 28 U.S.C. § 1658. Thus, Section 1658(a) governs a much narrower class of claims than Section 2401(a), and is therefore more specific. Courts have consistently held that domain-specific statutes of limitations like Section 1658(a) displace general statutes like Section 2401. *See Save Our Skies LA v. FAA*, 50 F.4th 854, 865 (9th Cir. 2022) (holding that six-year statute of limitations in Section 2401 was displaced by more specific statute); *Cal. Coastkeeper All. v. Cosumnes Corp.*, No. 2:20-CV-1703 SCR, 2024 WL 4819208, at *11 (E.D. Cal. Nov. 18, 2024)

(same); *Myszkowski v. U.S. Gov't*, 553 F. Supp. 66, 67 (N.D. Ill. 1982) (two-year limit in Section 2401(b), which dealt “specifically with tort claims,” overrode six-year limit in Section 2401(a)); *Baker Cnty. Med. Servs., Inc. v. Summit Smith L.L.C.*, No. 3:05-CV-541-J-33HTS, 2008 WL 2245587, at *14 (M.D. Fla. May 29, 2008) (more specific statute of limitations that “applies to a very specific class of a cause of action [sic]” governed, rather than statute “dealing with a broad class of claims”); *Kasterowicz v. Walgreen Co.*, No. 2:14-CV-68-FtM-29DNF, 2014 WL 1779262, at *1–2 (M.D. Fla. May 5, 2014) (similar), *aff'd*, 597 F. App’x 560 (11th Cir. 2014).

Faced with this wall of precedent, Appellants contend—without citing any relevant authority—that Section 2401(a) is more specific because it “applies only to suits against the United States.” JS 30–31. But that is an extremely broad class of cases, covering all manner of different subject matters: in 2025 alone, the United States was named as a defendant in over 46,000 filings.⁸ By contrast, Section 1658 covers only particular causes of action—those brought under statutes enacted since 1990. The three-judge court noted that the class of claims arising under federal statutes enacted since 1990 is relatively narrow, *see* App.53a–54a, and Appellants cite nothing to indicate otherwise.

In short, there is no conflict between Sections 2401(a) and 1658(a): Section 2401(a) sets an outer

⁸ United States Courts, *Judicial Business 2025*, <https://perma.cc/SA7Z-GWRM>.

limit for the United States’ liability, while Section 1658(a) provides a shorter limitation period for a subset of statutory claims. But to the extent there is a conflict, Appellants have not shown any error by the three-judge court in concluding that Section 1658(a) is the more specific statute. Appellants’ claims are therefore time-barred.

III. In the alternative, laches bars Appellants’ claims.

Although the three-judge court did not need to reach the issue, Appellants’ claims would be barred by laches even if they were not time-barred under Section 1658(a). Generally, laches bars a plaintiff from obtaining equitable relief—like the relief Appellants seek here—if the plaintiff has “unreasonabl[y] delay[ed] . . . prosecuting a claim” and the delay has “worked a prejudice to the defendant.” *SCA Hygiene Prods. Aktiebolag v. First Quality Baby Prods., LLC*, 580 U.S. 328, 333 (2017) (quotation omitted). Appellants’ conduct meets both elements of laches. Here, Appellants’ claims accrued by April 2021, when the Census Bureau publicly released the state population and apportionment data that Appellants challenge. Dkt. No. 84 at 12–13; *see* App.54a n.19 (incorporating this accrual discussion by reference). Yet Appellants waited more than four years after that to bring suit, while states across the country redistricted and held multiple elections in districts drawn based on the census results that Appellants now challenge.

There is no excuse for Appellants’ delay. The Census Bureau’s COVID-19–related changes to direct

enumeration efforts to which Appellants now attribute their injuries were actively litigated in real time in 2020, without Appellants’ participation. *See generally Nat’l Urban League v. Ross*, 489 F. Supp. 3d 939 (N.D. Cal.), *stay granted*, 592 U.S. 994 (2020). Appellants offer no explanation for why they did not file a lawsuit then, when their concerns could still have been remedied by adjusting procedures, rather than waiting until 2025, when it was far too late. And to the extent Appellants also needed to know about imputation—why that would be so is unclear, as imputation only helped Florida—Appellants acknowledged below that the “full scope” of the challenged imputation was “apparent” by no later than February 2022. Dkt. No. 103 at 23. Appellants then waited another three-and-a-half years to bring their claims, a significant and prejudicial delay.

Appellants do not even attempt to justify this long delay, which is commensurate with delays that courts have found sufficient to trigger laches in similar cases. *See, e.g., Fouts v. Harris*, 88 F. Supp. 2d 1351, 1354 (S.D. Fla. 1999) (laches barred gerrymandering claim when “Plaintiffs delayed bringing this action for at least five years” after learning of the alleged violation), *aff’d sub nom. Chandler v. Harris*, 529 U.S. 1084 (2000); *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm’n*, 366 F. Supp. 2d 887, 908–09 (D. Ariz. 2005) (two-year delay in bringing challenge to redistricting plan was sufficient to trigger laches); *Sanders v. Dooly Cnty.*, 245 F.3d 1289, 1290–91 (11th Cir. 2001) (per curiam) (plaintiffs chal-

lenging districting plan who waited “over six years after the first use of the plan” had exhibited “inexcusable delay” that barred their claim for injunctive relief).

Appellants’ delay also caused substantial prejudice. During the years while Appellants sat on the sidelines, forty-four states have redrawn their congressional districts in reliance on the 2020 Census Report, all fifty states have redrawn state and local districts, and two federal elections have been held in the newly drawn districts—with another to be held this year. If Appellants prevail, all of that work would have to be redone. *See Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 687 (2014) (laches may bar a claim where the plaintiff’s undue delay would “work . . . unjust hardship on innocent third parties”); *Motley v. Taylor*, 451 F. Supp. 3d 1251, 1278 (M.D. Ala. 2020) (noting that expending government resources is a relevant factor to consider when assessing a laches defense).

Moreover, while the doctrine of laches does not generally bar relief for claims brought within the relevant limitations period, it may do so in “extraordinary circumstances.” *Petrella*, 572 U.S. at 685. “Extraordinary circumstances” exist where “the consequences of [the plaintiff’s] delay in commencing suit [are] of sufficient magnitude” to require “curtailment of the relief equitably awardable.” *Id.* Such circumstances are present here, where the relief Appellants seek would require unwinding a census taken over six years ago and require the reconfiguration of nearly every congressional and legislative district in the country, after multiple federal elections have been

held, members of Congress elected, redistricting lawsuits litigated, and much else. *Cf. Chirco v. Crosswinds Cmty., Inc.*, 474 F.3d 227, 232, 236 (6th Cir. 2007) (holding it would be “inequitable” to mandate destruction of a housing project that used the plaintiffs’ copyrighted architectural design based on a timely but delayed copyright suit) (cited in *Petrella*, 572 U.S. at 685–86); *New Era Publ’ns Int’l v. Henry Holt & Co.*, 873 F.2d 576, 584–85 (2d Cir. 1989) (holding laches barred injunctive relief that would have resulted in the “total destruction” of a book that had already been “printed, packed, and shipped”) (cited in *Petrella*, 572 U.S. at 686); *see also Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs*, 239 F. Supp. 3d 77, 87–88 (D.D.C. 2017) (holding request to enjoin construction that was “days from completion” was barred by laches, though brought within statute of limitations).

The nationwide effects of the order Appellants seek here would be significantly more far-reaching and destabilizing than the injunctions sought in *Chirco*, *New Era*, or *Standing Rock*. Indeed, Congress has expressly foreclosed the use of mid-decade census data for exactly these purposes. *See* 13 U.S.C. § 141(e)(2) (noting that information obtained from a mid-decade census “shall not be used for apportionment of Representatives in Congress among the several States”). Thus, the doctrine of laches bars Appellants’ claims even if they are not time-barred.

IV. There is no need for this Court’s plenary review.

For the reasons given in the prior sections, this Court should affirm the three-judge court’s ruling. And the Court should do so summarily, because this case presents no novel or difficult legal question warranting plenary review. Appellants’ two attempts to argue otherwise both fail.

First, Appellants are wrong to claim that the three-judge court’s ruling “makes meaningful relief under § 209 almost impossible.” JS 32. They complain that the three-judge court held their claims accrued no later than 2021, when the Census Bureau released its redistricting data reflecting the challenged statistical procedures, but that “disclosures about how extensive the use of whole-person imputation was in the 2020 census did not come until July 2023.” JS 32. Even under that timeline, however, Appellants could have brought this case in 2023 or 2024—well within the four-year statute of limitations. And in fact, the *National Urban League* litigation makes clear that Appellants could have raised what they now say is the actual cause of their injury—inadequate direct enumeration efforts—in 2020 while those efforts were ongoing, and when they would have been straightforwardly redressable by a court order demanding that enumeration efforts continue. *See Nat’l Urban League*, 489 F. Supp. 3d 939. The three-judge court’s holding therefore did not “close the door on § 209 actions.” *Contra* JS 33. Rather, Appellants closed the door on their own Section 209 action by waiting for

years after their alleged injuries became apparent to file suit.

Second, Appellants’ closing argument that *Utah v. Evans* was wrongly decided and “should be overruled,” JS 36–37, raises an issue that this case simply does not present. Whether or not *Evans* was right on the merits, the three-judge court’s standing and timeliness holdings remain, and they prevent the Court from proceeding further. See *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 93–97 (1998). And the particular census conduct that Appellants challenge is unlikely to recur in any event. Appellants admit that the 2020 Census “represented a stark departure from normal census operations” due to “the COVID-19 pandemic.” JS 7. Barring another exceptionally poorly timed global pandemic, there is no reason to think the Bureau will face comparable barriers to direct enumeration in the future.

In any event, the facts of this case illustrate why *Evans* was rightly decided. The COVID-19 pandemic did, indeed, make taking the 2020 Census much harder. And when direct enumeration efforts failed for a particular residence, the Bureau was forced to choose between “using a figure of zero” and “us[ing] imputation in an effort to achieve greater accuracy.” *Evans*, 536 U.S. at 478. Appellants should be thankful that *Evans* allowed the Bureau to do its best under the difficult circumstances, reducing Florida’s relative undercount and reducing their alleged injuries, rather than forcing the Bureau to “make a far less accurate assessment of the population.” *Id.* at 479. Overruling *Evans* and disallowing imputation would only make

Appellants’ alleged injuries—and the Census’s accuracy—worse.

CONCLUSION

For the foregoing reasons, Intervenor-Appellees respectfully ask the Court to summarily affirm.

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