

Testimony of Dr. James Thomas Tucker¹

Before the Senate Committee on Indian Affairs

Making Indian Country Count: Native Americans and the 2020 Census

February 14, 2018

Chairman Hoeven, Vice Chairman Udall, and Members of the Committee, thank you for your invitation to testify on making Indian Country count in the 2020 Census. The Native American Rights Fund (NARF) applauds the Committee for examining this important topic.

NARF is the oldest and largest nonprofit law firm dedicated to asserting and defending the rights of Indian tribes, organizations and individuals nationwide. NARF co-founded and leads the Native American Voting Rights Coalition (NAVRC), a coalition of national and regional grassroots organizations, academics, and attorneys advocating for the equal access of Native Americans to the political process.²

Why an Accurate Census Matters to Indian Country

The 2020 Census is one of the foremost civil rights issues in Indian Country. It serves as the keystone for our representative government in two ways. First, it determines federal apportionment under Article I, Section 2 of the U.S. Constitution, as well as state and local apportionment in non-tribal elections to meet constitutional equal population (one person, one vote) requirements. Second, decennial census data is used in redistricting to draw the lines that link representatives to their constituents for the next ten years. Past undercounts of the American Indian and Alaska Native (AIAN) populations have deprived hundreds of thousands of Native Americans of their voice in government. Without an equal voice in elections, Indian Country is deprived of access to the resources and policy decisions that are so desperately needed in some of the nation's most economically disadvantaged communities.

An accurate count also means dollars, with decennial census data serving as the basis for funding allocations for federally funded programs. Each year, nearly \$600 billion in federal funds is distributed based upon population counts obtained through surveys by federal agencies. The AIAN population cannot be cut out of their access to critical federal programs because some may believe it is not expedient or cost-effective to count Native peoples living in more sparsely populated communities.

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² For more information about the NAVRC, see NARF, About the Native American Voting Rights Coalition, available at <https://www.narf.org/native-american-voting-rights-coalition/>.

Overview of the American Indian and Alaska Native Population and its Undercount

The AIAN population is one of the fastest growing population groups in the United States. According to the 2010 Census, the number of people identifying themselves as AIAN alone or in combination with one or more other races increased nearly three times as fast as the total U.S. population, growing by 27 percent from 4.1 million in 2000 to 5.2 million in 2010.³ As of 2016, the AIAN population, including those of more than one race, is estimated to be 6.7 million, comprising approximately two percent of the total population.⁴ By 2060, the AIAN population is projected to be 10.2 million alone or in combination with one or more other races, comprising about 2.4 percent of the estimated total population.⁵

Nearly half of all of the states have a substantial AIAN population. According to the Census Bureau, in 2016, 21 states had a population of 100,000 or more Alaska Natives or American Indian residents, alone or in combination with another race.⁶ Alaska had the largest percentage of AIAN residents, who comprised 19.9 percent of the state's population in 2016. Other states in the top five included Oklahoma (13.7 percent), New Mexico (11.9 percent), South Dakota (10.4 percent) and Montana (8.4 percent).⁷ In 2016, California had the largest estimated AIAN population, with nearly 1.1 million AIAN residents.⁸ American Indians and Alaska Natives reside in every region of the United States, whether rural or urban.

Despite their growth, the AIAN population continues to experience the largest census undercount of any population group. The Census Bureau estimates that American Indians and Alaska Natives living on reservations or in Native villages were undercounted by approximately 4.9 percent in 2010, more than double the undercount rate of the next closest population group.⁹ The undercount occurred in 2010 despite the Census Bureau's "special emphasis ... on outreach

³ U.S. Census Bureau, Population Division, 2010 Census Briefs, *The American Indian and Alaska Native Population: 2010*, at 3-4 (Jan. 2012).

⁴ U.S. Census Bureau, Population Division, *Annual Estimates of the Resident Population by Sex, Age, Race and Hispanic Origin for the United States and States: 2016 Population Estimates*, Table PEPASR5H (June 2017).

⁵ U.S. Census Bureau, Population Division, Table 10, *Projections of the Population by Sex, Hispanic Origin, and Race for the United States: 2015 to 2060 (NP2014-T10)* (Dec. 2014).

⁶ U.S. Census Bureau, Population Division, *Annual Estimates of the Resident Population by Sex, Age, Race Alone or in Combination, and Hispanic Origin for the United States and States: April 1, 2010 to July 1, 2016* (June 2017) ("2016 AIAN Estimates"). The 21 states were Alaska, Arizona, California, Colorado, Florida, Georgia, Illinois, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington and Wisconsin. *See id.*

⁷ U.S. Census Bureau, *Facts for Features: American Indian and Alaska Native Heritage Month: November 2017* (Oct. 6, 2017), available at <https://www.census.gov/newsroom/facts-for-features/2017/aian-month.html> ("2017 AIAN Summary").

⁸ 2016 AIAN Estimates, *supra* note 6, for California.

⁹ U.S. Census Bureau, 2010 Census Coverage Measurement Results News Conference, PowerPoint Presentation 19 (May 22, 2012), available at https://www.census.gov/2010census/news/pdf/20120512_ccm_newsconf_slides.pdf. The Census Bureau has determined that the 2010 undercount for the on-reservation AIAN population is significantly different from the 2000 Census. *Id.*

to those living on reservations and in Alaska Native villages and communities, a population that has been historically undercounted.”¹⁰

There are Many Reasons for the Undercount of American Indians and Alaska Natives

Members of the 567 federally recognized tribes¹¹ are more vulnerable than other groups to being undercounted because of the many unique challenges they face. Tribal members who live on reservations or in Alaska Native villages may be geographically isolated. Native communities overwhelmingly have smaller populations and reside in Hard-to-Count Census Tracts, which necessitates techniques including Nonresponse Follow-Up (preferably in-person), larger sample sizes, and oversampling among other things. A variety of other barriers exist to accurate enumeration, some of which are unique to the American Indian and Alaska Native population.

Historical distrust of the federal government:

As a starting point, one of the most significant barriers to enumeration by the Census Bureau is the bad relationship the AIAN population has had, and continues to have, with the federal government. Antipathy and distrust persist towards Federal, State, and local governments because of past (and in some cases, ongoing) actions that discriminate against Natives or that undermine the preservation of their culture and heritage. One recent example of a federal action contributing to this distrust is the Administration’s unlawful action in revoking and replacing the Bears Ears National Monument on December 4, 2017,¹² despite the years of efforts by the Tribal Governments in and around Bears Ears to get the National Monument established.¹³ Another is the Administration’s revival of the Dakota Access and Keystone XL Pipelines, which were approved in spite of the dangers they pose to local water supplies and sacred burial grounds of Native peoples in the Dakotas, Iowa, and Nebraska.¹⁴

In the fall of 2016 and spring of 2017, NAVRC oversaw one of the most comprehensive in-person surveys ever conducted in Indian Country about barriers faced by Native voters. A

¹⁰ U.S. Census Bureau, Tribal Consultation Handbook: Background Materials for Tribal Consultations on the 2020 Census 20 (Fall 2015) (noting that the AIAN Program was changed for the 2000 Census “to address an undercount from the 1990 Census, and to respect the diversity of each tribe”), available at https://www.census.gov/content/dam/Census/library/publications/2015/dec/2020_tribal_consultation_handbook.pdf.

¹¹ U.S. Dep’t of the Interior, Bureau of Indian Affairs, Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 82 Fed. Reg. 4,915 to 4,920 (Jan. 17, 2017) (listing federally recognized tribes and Alaska Native villages).

¹² See The White House, Presidential Proclamation Modifying the Bears Ears National Monument (Dec. 4, 2017), available at <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-modifying-bears-ears-national-monument/>.

¹³ See NARF, Protecting Bears Ears National Monument, available at <https://www.narf.org/cases/protecting-bears-ears-national-monument/> (providing an overview of Bears Ears and a copy of the Complaint filed by NARF on behalf of the Tribes to stop the Administration’s unlawful proclamation).

¹⁴ See NARF, Trump Signs Presidential Memoranda to Revive Dakota Access and Keystone XL Pipelines (Jan 25, 2017), available at <https://www.narf.org/trump-signs-presidential-memoranda-revive-dakota-access-keystone-xl-pipelines/>.

total of 2,800 Native voters in four states completed the in-person survey.¹⁵ In all four states, Native voters expressed the greatest trust in their Tribal Governments. Although the federal government was identified by respondents as the most trusted of non-tribal governments (federal, state, local), the level of trust ranged from a high of just 28 percent in Nevada to a low of only 16.3 percent in South Dakota.¹⁶ Those negative experiences often deter responses to government inquiries.

Moreover, even when federal officials engage in outreach to Tribal Governments, their engagement often lacks the cultural sensitivity necessary to be effective. For example, at NAVRC's Portland field hearing on the state of voting rights in Indian Country, a member of the Yakama Tribe explained the impact of having non-Native trainers.¹⁷ He attended a Census meeting in which a non-Native trainer purported to explain to the Native enumerators what steps they needed to take to be culturally appropriate for their interactions with Native respondents. The Yakama tribal member walked out of the meeting while it was still in progress. When another attendee asked why, he responded that it was inappropriate for a non-Native person to tell him about his own Native culture. Another pervasive example of the lack of sensitivity occurs when federal officials show up on tribal lands, unannounced and without an invitation from the Tribal Government.

Geographical isolation and inclement weather conditions:

Geography is a difficult barrier for the Census to overcome in its enumeration efforts in Indian Country.

Approximately one-third of the total AIAN population lives in Hard-to-Count Census Tracts – roughly 1.7 million out of 5.3 million people from the 2011-2015 American Community Survey (ACS) estimates.¹⁸ Hard-to-Count Census Tracts include those Census Tracts “in the bottom 20 percent of 2010 Census Mail Return Rates (i.e. Mail Return Rates of 73 percent or less) or tracts for which a mail return rate is not applicable because they are enumerated in 2010 using the special Update/Enumerate method.”¹⁹ The states with the greatest percentage of the

¹⁵ See The Native American Voting Rights Coalition, Survey Research Report: Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada and South Dakota 8, 38, 67 (Jan. 2018) (“NAVRC Report”), available at <https://www.narf.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-results.pdf>. The Executive Summary of the NAVRC Report is available at <https://www.narf.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-summary.pdf>. The survey respondents included 644 Native voters in Arizona, 1,052 in Nevada, 602 in New Mexico, and 502 in South Dakota. NAVRC Report, *supra*, at 8, 38, 67.

¹⁶ See NAVRC Report, *supra* note 15, at 15, 45, 77, 111. Respondents were asked, “Which government do you trust most to protect your rights?” *Id.* at 15, 45, 76-77. Among respondents in the other two states, 22.1 percent identified the federal government in Arizona and 27.4 percent identified the federal government in New Mexico. *See id.* at 77, 111.

¹⁷ For more information about the NAVRC's field hearings, see NARF, Voting Rights Hearings, available at <https://www.narf.org/voting-rights-hearings/>.

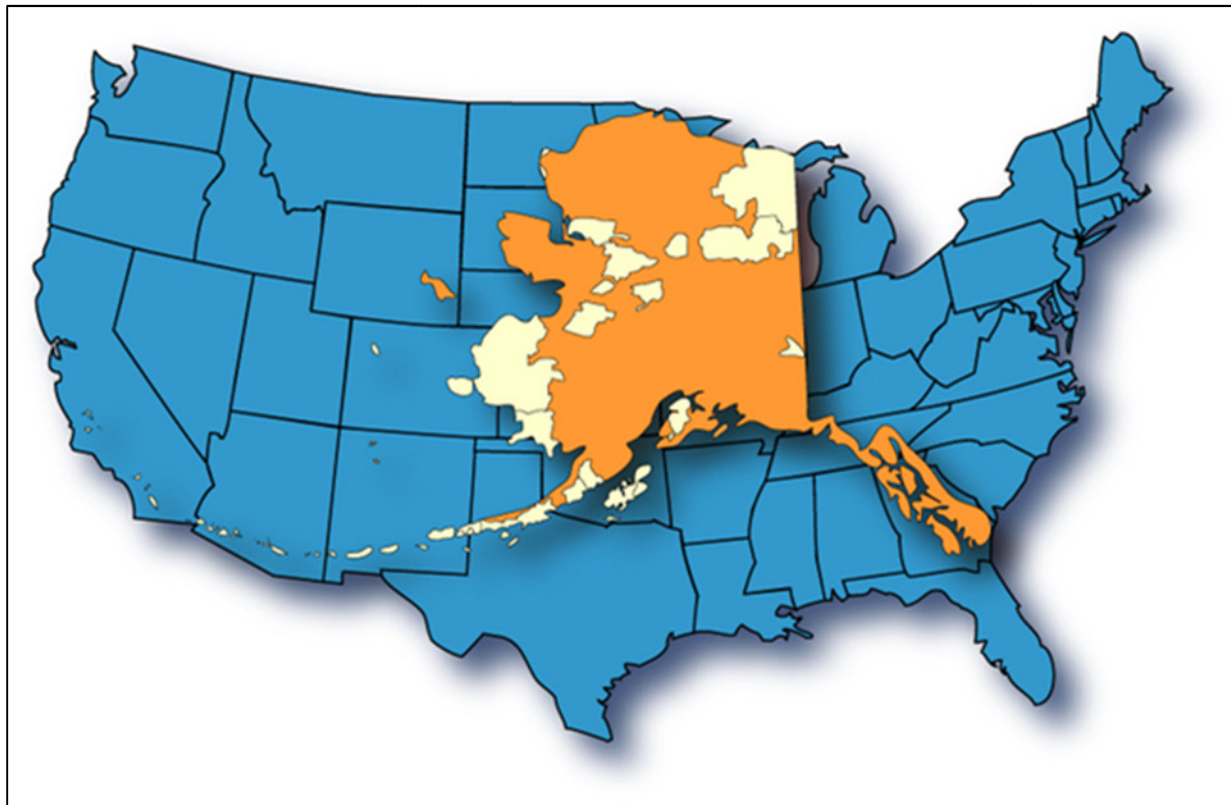
¹⁸ See The Leadership Conference Education Fund, Table 1a: States Ranked by Number of American Indian/Alaska Natives (race alone or combination) living in Hard-to-Count (HTC) Census Tracts, available at <http://civilrightsdocs.info/pdf/census/2020/Table1a-States-Number-AIAN-HTC.pdf>.

¹⁹ *Id.*

AIAN population in Hard-to-Count Census Tracts reside in the western states: New Mexico (78.6 percent), Arizona (68.1 percent), and Alaska (65.6 percent).²⁰ Geographical isolation plays one of the most significant reasons for why those states have such a large percentage of their AIAN population in Hard-to-Count areas.

Alaska presents a particularly compelling example of how geographical barriers impact accurate enumeration. The logical starting point for that example is to illustrate the sheer size of the largest state:

Figure 1. Comparison of the Size of Alaska to the Continental United States.



Despite its size, the rural areas of Alaska generally are very sparsely populated. As an example, NARF brought a voting rights action on behalf of the largest group of Yup'ik-speaking Alaska Natives: those residing in villages in the Bethel Census Area. The Bethel Census Area covers an area of over 40.5 million square miles²¹ or roughly the size of the state of Tennessee.²²

²⁰ See The Leadership Conference Education Fund, Table 1b: States Ranked by Percent of American Indian/Alaska Natives (race alone or combination) living in Hard-to-Count (HTC) Census Tracts, *available at* <http://civilrightsdocs.info/pdf/census/2020/Table1b-States-Percent-AIAN-HTC.pdf>.

²¹ U.S. Census Bureau, QuickFacts: Bethel Census Area, Alaska (“BCA QuickFacts”), *available at* <https://www.census.gov/quickfacts/fact/table/bethelcensusareaalaska/PST045216>.

²² See U.S. Census Bureau, QuickFacts: Tennessee (“Tennessee QuickFacts”), *available at* <https://www.census.gov/quickfacts/TN>.

However, in 2016, the Bethel Census Area had a total estimated population of just 17,968, a population density of just 0.4 persons per square mile.²³

Nearly all of rural Alaska, which is dominated by Alaska Native communities, is not on the state road system. Access to those communities is typically by air or by boat. In the winter months, when the conditions permit, villages also may be connected by “ice roads,” which are traversed by snowmobile or ATVs that travel on frozen rivers. For communities that are not regional “hubs” like Bethel and Dillingham, air services are provided by “bush pilots” who use runways that are little more than gravel roads. Flights are limited to Visual Flight Rules (VFR) conditions when the rough-hewn runways are not iced over.

Because of the limited accessibility to over 200 geographically isolated rural and Alaska Native communities, travel is much more constrained by the dominant weather conditions than any other location in the continental United States. It is not unusual for villages to be inaccessible by air for several weeks due to inclement weather, icing conditions, and above all fog. During the Alaska voting rights litigation in which I have served as co-counsel, I have experienced these conditions first-hand. Flights have been cancelled or delayed even under the best weather conditions, when the fog may linger late into the day.

Geography and weather have a tremendous impact on the mail service, which historically has played a key role in Census enumeration efforts. The extraordinary efforts that postal workers make to deliver mail to isolated Alaska Native villages are truly commendable. But rural Alaska may be one of the few places in the world in which the immortal words of Herodotus do not always ring true: “Neither snow, nor rain, nor heat, nor gloom of night, stays these couriers from the swift completion of their appointed rounds.” Unpredictable weather conditions in the outer reaches of Alaska always have the final say in the delivery and pick-up of mail, including the critical communications being sent by the Census Bureau regarding its enumeration and data-gathering programs.

While the geographical challenges to reaching the AIAN population in Alaska can be extreme, they are not unique to Alaska. The Havasupai Indian Reservation in Arizona, which is located at the bottom of the Grand Canyon, is among the nation’s most isolated reservations. The Red Lake Indian Reservation in northwestern Minnesota, which has the state’s second largest AIAN population, is separated from much of the rest of the state. Many reservations are located far from urban areas and are connected (if at all) by roads that are susceptible to changing weather conditions.²⁴ Unpaved and poor driving conditions add to the isolation that is part of the daily lives of much of the AIAN population residing on rural reservations.

²³ See BCA QuickFacts, *supra* note 21. That compares to a population density of 153.9 persons per square mile in Tennessee. See Tennessee QuickFacts, *supra* note 22.

²⁴ See generally Rosanda Suetopka, *Wet Weather Wreaks Havoc on Rez Bus Routes*, NAVAJO-HOPI OBSERVER (Dec. 16, 2014) (“Road conditions on both Navajo and Hopi reservations become extremely tricky and dangerous in the wintertime causing expensive repair work on personal and school vehicles. The vehicles travel over deeply mud-rutted and pot-holed roads, which have been damaged by snow and rain, ruining and damaging wheel alignment and tires.”), available at <https://www.nhnews.com/news/2014/dec/16/wet-weather-wreaks-havoc-on-rez-bus-routes/>.

Non-traditional mailing addresses and homelessness:

The 2015 National Content Test (NCT) Report illustrates the many challenges the Census Bureau and other federal agencies face in the accurate enumeration of the AIAN population.²⁵ ***Among all of the population groups included in the 2015 NCT, the AIAN population experienced the lowest 2010 Census mail response rate, at 57.8 percent.***²⁶ The lack of mailing addresses for many Native peoples on tribal lands had an impact on how the 2015 NCT was conducted in Indian Country. As the Census Bureau explained, its report “includes only self-responders in areas with relatively high address mailability. Recall that the 2015 NCT did not include a Nonresponse Followup operation or any enumeration of areas with high concentrations of nonmailable addresses.”²⁷ Although this was a significant limitation of the 2015 NCT, it offers an accurate representation of the challenges in counting many AIAN persons and households.

Two contributing factors to low mail response rates in Indian Country are lack of traditional mailing addresses and homelessness.

Non-traditional mailing addresses are prevalent among American Indians and Alaska Natives residing on tribal lands. Non-traditional mailing addresses encompass “noncity-style addresses, which the Census Bureau defines as those that do not contain a house number and/or a street name.”²⁸ Examples of noncity-style mailing addresses include:

- General delivery
- Rural route and box number
- Highway contract route and box number
- Post office box only delivery

Noncity-style addresses used by the Census Bureau also include location descriptions such as “BRICK HOUSE with ATTACHED GARAGE ON RIGHT,” structure points (geographic coordinates), and census geographic codes including state code, county code, census tract number, and census block number.²⁹

It is commonplace for homes on tribal lands to use noncity-style mailing addresses. Many homes can only be identified by a geographic location (e.g., “hogan located three miles

²⁵ See U.S. Census Bureau, 2015 National Content Test Race and Ethnicity Analysis Report (Feb. 28, 2017) (“NCT Report”).

²⁶ *Id.* at 32, table 2.

²⁷ *Id.* at 58.

²⁸ U.S. Census Bureau, 2020 Census Local Update of Census Addresses Program Improvement Project Recommendations 2 (Apr. 13, 2015) (“2020 LUCA Recommendations”), available at https://www2.census.gov/geo/pdfs/partnerships/2020_luca_recommendation.pdf.

²⁹ *Id.*

down dirt road from Hardrock Chapter House”). Others may be located by reference to a BIA, state, or county road mile marker (e.g., “the house located on the right side of BIA-41 between highway marker 17 and highway marker 18”) or intersection (e.g., the house at the intersection of BIA-41 and BIA-15”). Additionally, mailboxes may be on the side of the road far from where the home(s) associated with them are located, with the mailbox identified only by a General Delivery number, Rural Route, or box number. Many AIAN residents of tribal lands only receive their mail by post office box. Often, several families or generations of a single family might share a post office or general delivery box to get their mail.

At the NAVRC field hearings on voting rights, several AIAN witnesses have testified about how their use of a non-traditional mailing address has either made it difficult to register to vote or has disenfranchised them altogether. This testimony has been consistent throughout Indian Country, regardless of the location of the tribal lands:

- At the Bismarck, North Dakota field hearing, an elected county official testified that many voters residing on the Crow Creek Indian Reservation in Buffalo County, South Dakota have had difficulty registering to vote because of non-traditional addresses. That problem persisted even after efforts were undertaken to identify physical addresses to use in the County’s 911-emergency notification system.
- At the Portland, Oregon field hearing, voters from the Colville and Yakama Reservations in eastern Washington State testified that many tribal members were unable to register to vote to receive their ballot by mail for state elections because they only had post office boxes available that could not be readily correlated with a physical address where they actually lived.
- At the San Diego field hearing, a member of the Torrez Martinez Desert Cahuilla Indian, located just west of the Salton Sea in California, did not have a traditional mailing address and was only able to vote because of the timely intervention of a family friend who was running for office and was able to get a waiver of the registration requirement for a physical address.

NARF is currently litigating this very issue in North Dakota,³⁰ where the state legislature enacted a restrictive voter identification law that requires that acceptable identification cards must contain a registrant’s residential address – which most tribal members living on tribal lands do not have because of their use of non-traditional mailing addresses.³¹ The same barriers that AIAN persons with non-traditional mailing addresses experience in attempting to register to vote make it difficult for them to be identified by Census enumerators.

³⁰ See *Brakebill v. Jaeger*, Civil Action No. 1:16-cv-00008-DLH-CSM (Am. Compl. filed Dec. 13, 2017).

³¹ See NARF, *Brakebill, et al. v. Jaeger* (ND Voter ID Law), available at <https://www.narf.org/cases/nd-voter-id/>.

The disproportionately high rate of homelessness in Indian Country is another major factor contributing to low mailing response rates among the AIAN population. According to the 2016 ACS, only 52.9 percent of single-race American Indian and Alaska Native householders owned their own home, compared to 63.1 percent of the total population.³² According to data from the U.S. Department of Housing and Urban Development, although “only 1.2 percent of the national population self-identifies as AI/AN ... 4.0 percent of all sheltered homeless persons, 4.0 percent of all sheltered homeless individuals, and 4.8 percent of all sheltered homeless families self-identify as Native American or Alaska Native.”³³ The AIAN population likewise experiences higher rates of homelessness among veterans than other population groups. Specifically, “2.5 percent of sheltered, homeless Veterans were American Indian or Alaska Native, although only 0.7 percent of all Veterans are American Indian or Alaska Native.”³⁴

Homelessness takes several forms in Indian Country. Witnesses at the NAVRC field hearings in Portland and San Diego testified that it is common for younger AIAN persons to frequently change residence. Those practices can vary from “crashing on a couch” of a friend or classmate, to temporarily sleeping at a relative’s house when they are on the reservation. According to the 2016 ACS, approximately 15.5 percent of the AIAN population was residing in a different house than the one they reported a year earlier.³⁵ Frequently changing residences, with no single permanent residence, can make many American Indians and Alaska Natives harder to locate.³⁶

The top five locations with the largest number of AIAN people living in Hard-to-Count Census Tracts are all in urban areas: New York City (44,760 people); Phoenix (21,398 people); Oklahoma City (19,826 people); Los Angeles (19,056 people); and Anchorage (14,151 people).³⁷ Similarly, the top five locations with the largest percentage of AIAN people living in Hard-to-Count Census Tracts are in large cities: Newark (97.5 percent); Jersey City (94.7 percent); New Orleans (86.9 percent); Buffalo (82.2 percent); and Paradise CDP, part of unincorporated Las

³² 2017 AIAN Summary, *supra* note 7.

³³ Substance Abuse and Mental Health Services Administration (SAMHSA), Expert Panel on Homelessness among American Indians, Alaska Natives, and Native Hawaiians 5 (2012), *available at* https://www.usich.gov/resources/uploads/asset_library/Expert_Panel_on_Homelessness_among_American_Indians_%2C_Alaska_Natives%2C_and_Native_Hawaiians.pdf.

³⁴ *Id.* at 8 (citing HUD & VA, Veteran Homelessness: A Supplemental Report to the 2010 Annual Homeless Assessment Report to Congress).

³⁵ See U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, Selected Population Profile in the United States: American Indian and Alaska Native alone (300, A01-Z99) (“2016 AIAN Profile”), *available at* <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>.

³⁶ U.S. Department of Housing and Urban Development, “Housing Needs of American Indians and Alaska Natives in Tribal Areas: A Report From the Assessment of American Indian, Alaska Native, and Native Hawaiian Housing Needs (Jan. 2017), *available at* <https://www.huduser.gov/portal/sites/default/files/pdf/HNAIHousingNeeds.pdf>.

³⁷ See The Leadership Conference Education Fund, Table 2a: Largest Places Ranked by Number of American Indian/Alaska Natives (race alone or combination) living in Hard-to-Count (HTC) Census Tracts, *available at* <http://civilrightsdocs.info/pdf/census/2020/Table2a-100-Largest-Places-Number-AIAN-HTC.pdf>.

Vegas (67.5 percent).³⁸ Urban Indians often reside in Hard-to-Count Census Tracts because of depressed socio-economic characteristics, which they share in common with other population groups residing in those Tracts.³⁹

Socio-economic barriers:

Socio-economic barriers likewise make the AIAN population harder for enumerators to reach. Native peoples have the highest poverty rate of any population group, 26.6 percent, which is nearly double the poverty rate of the nation as a whole.⁴⁰ The poverty rate was even higher on federally recognized Indian reservations and Alaska Native villages, at 38.3 percent.⁴¹ The median household income of single-race American Indian and Alaska Native households in 2016 was \$39,719, far below the national median household income of \$57,617.⁴²

The AIAN population also has lower rates of educational attainment, which impacts their participation in the Census. Among the AIAN population 25 years of age and older, 20.1 percent had less than a high school education.⁴³ The unemployment rate of those aged 16 and older in the workforce was 12 percent.⁴⁴ Approximately 19.2 percent lacked health insurance,⁴⁵ and 13.4 percent of all occupied households lacked access to a vehicle.⁴⁶

Age:

Younger populations typically are harder to count than older populations in the Census. To illustrate that fact, in the 2010 Census, the net undercount for young children was 4.6 percent,⁴⁷ very close to the undercount rate of approximately 4.9 percent for American Indians

³⁸ See The Leadership Conference Education Fund, Table 2b: Largest Places Ranked by Percent of American Indian/Alaska Natives (race alone or combination) living in Hard-to-Count (HTC) Census Tracts, available at <http://civilrightsdocs.info/pdf/census/2020/Table2b-100-Largest-Places-Percent-AIAN-HTC.pdf>.

³⁹ For an excellent article describing the challenges faces by urban Indians, see Joe Whittle, *Most Native Americans Live in Cities, Not Reservations. Here are Their Stories*, THE GUARDIAN (U.S. EDITION) (Sept. 4, 2017), available at <https://www.theguardian.com/us-news/2017/sep/04/native-americans-stories-california>.

⁴⁰ U.S. Census Bureau, Profile America Facts for Features: CB16-FF.22, American Indian and Alaska Native statistics, available at <https://www.census.gov/newsroom/facts-for-features/2016/cb16-ff22.html> (Nov. 2, 2016) (“2016 AIAN FFF”).

⁴¹ U.S. Census Bureau, Table B17001C: Selected Population Profile in the United States: 2015 American Community Survey 1-Year Estimates (last visited on Feb. 7, 2018), available at https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_1YR/B17001C/0100000US0100089US.

⁴² 2017 AIAN Summary, *supra* note 7.

⁴³ See 2016 AIAN Profile, *supra* note 35.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See U.S. Census Bureau, Decennial Statistics Studies Division, Investigating the 2010 Undercount of Young Children – A New Look at 2010 Census Omissions by Age 1 (July 26, 2016), available at <https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-report-2010-undercount-children-omissions.pdf>.

and Alaska Natives residing on tribal lands.⁴⁸ Among all American Indians and Alaska Natives, the median age is over five years younger than the median age for the total population.⁴⁹ For American Indians and Alaska Natives living on reservations or in Alaska Native villages, the difference in median age with the total population is nearly nine years.⁵⁰

According to the 2016 ACS, 27.4 percent of all American Indians and Alaska Natives are under 18 years of age.⁵¹ Approximately one-third of the AIAN population under 18 years of age, 33.8 percent, is below the poverty line.⁵² The depressed socio-economic status of some of these children makes it harder to obtain an accurate count of them in the Census.

Language barriers and illiteracy among LEP Tribal Elders:

Dozens of different dialects are widely spoken among the major AIAN languages. Over a quarter of all single-race American Indian and Alaska Natives speak a language other than English at home.⁵³ Two-thirds of all speakers of American Indian or Alaska Native languages reside on a reservation or in a Native village,⁵⁴ including many who are linguistically isolated, have limited English skills, or a high rate of illiteracy.⁵⁵

Nationally, 357,409 AIAN persons reside in a jurisdiction covered by Section 203 of the Voting Rights Act, where assistance must be provided in the covered Native language.⁵⁶ Alaska Native language assistance is required in 15 political subdivisions of Alaska, which “is an increase of 8 political subdivisions from 2011.”⁵⁷ Assistance in American Indian languages is required in 35 political subdivisions in nine states, “up from the 33 political subdivisions of five states covered in the 2011 determinations.”⁵⁸

⁴⁸ See *supra* note 9.

⁴⁹ Compare U.S. Census Bureau, Table B01002C: Median Age by Sex (American Indian and Alaska Native) (American Indian and Alaska Native median age of 32.5 years), available at https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_1YR/B01002C, with U.S. Census Bureau, Table S0101: Age and Sex (median age of 37.8 years for the total population), available at https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_1YR/S0101.

⁵⁰ See U.S. Census Bureau, American FactFinder, Table B01002C, Median Age by Sex (American Indian and Alaska Native), American Indian Reservation and Trust Land, 2016 ACS 1-Year Estimates (28.8 years), available at https://factfinder.census.gov/bkmk/table/1.0/en/ACS/15_1YR/B01002C/0100000USI0100089US.

⁵¹ See 2016 AIAN Profile, *supra* note 35.

⁵² *Id.*

⁵³ 2016 AIAN FFF, *supra* note 40 (27 percent).

⁵⁴ See U.S. Census Bureau, Native American Languages Spoken at Home in the United States and Puerto Rico: 2006-2010 at 2 (Dec. 2011).

⁵⁵ See U.S. Census Bureau, Public Use Data File for the 2016 Determinations under Section 203 of the Voting Rights Act, available at https://www.census.gov/rdo/data/voting_rights_determination_file.html (Dec. 5, 2016).

⁵⁶ U.S. Census Bureau, Press Release: Census Bureau Releases 2016 Determinations for Section 203 of the Voting Rights Act (Dec. 5, 2016), available at <https://www.census.gov/newsroom/press-releases/2016/cb16-205.html>.

⁵⁷ AAJC, NALEO & NARF, Voting Rights Act Coverage Update 3 (Dec. 2016) (“Section 203 Update”), available at <https://advancingjustice-aajc.org/sites/default/files/2016-12/Section%20203%20Coverage%20Update.pdf>.

⁵⁸ *Id.*

Alaska, Arizona, and New Mexico have the largest number of Limited-English Proficient (LEP) persons voting-age citizens (that is, U.S. citizens who are 18 years of age and older). Between them, they account for approximately 87 percent of all American Indians and Alaska Natives who reside in an area required to provide language assistance in an Alaska Native or American Indian language:

Figure 2. Comparison Between the Top Three States with Limited-English Proficient AIAN Populations.

Alaska	Arizona	New Mexico
54,275 Alaska Natives live in one of the 15 areas covered by Section 203 for an Alaska Native language.	123,470 American Indians live in one of the six counties covered by Section 203 for an American Indian language.	132,955 American Indians live in one of the 10 counties covered by Section 203 for an American Indian language.
At least 10 percent of all Alaska Natives in covered areas are of voting age and LEP in an Alaska Native language.	At least 14.5 percent of all American Indians in covered areas are of voting age and LEP in an American Indian language.	At least 8 percent of all American Indians in covered areas are of voting age and LEP in an American Indian language.
LEP Alaska Natives are located in approximately 200 villages and communities in the 15 covered areas.	Approximately 96.7 percent of all American Indians who are LEP and reside in a county covered for Native language assistance reside in just three counties: Apache, Coconino, and Navajo.	91.1 percent of all American Indians and 89.3 percent of all voting-age American Indians who are LEP and live in a covered county live in just four counties: Bernalillo, McKinley, Sandoval, and San Juan.

Language poses a barrier to successful enumeration for several reasons. First, LEP American Indians and Alaska Natives, like other LEP populations, are generally among the hardest to reach within the Hard-to-Count population. Outreach and publicity communications written or transmitted in English usually are not understood unless they are translated into the applicable Native language. In-person communication through trained bilingual enumerators yields the best results, but can be confounded by the lack of enumerators fluent in the language, geography, and adequate funding to reach the LEP population.

Moreover, the difficulty in preparing complete, accurate, and uniform translations of survey tools (including instructions and questions) is compounded by the absence of words in Native languages for many English terms. Frequently, that requires that concepts be translated to communicate the meaning of what is being asked, rather than word-for-word translations. Identification of those concepts usually requires closely coordinating with trained linguists from Native communities to provide effective translations. It simply is not possible for Federal agencies to use a “one-size-fits-all” approach in creating and using survey instruments in Indian Country, including the Census enumeration.

Illiteracy also is very prevalent among LEP American Indians and Alaska Natives, especially among Tribal Elders. In areas covered by Section 203 of the Voting Rights Act,

illiteracy among LEP voting-age citizens is many times higher than the national illiteracy rate of 1.31 percent in 2016.⁵⁹

In Alaska, in covered areas for which Census data is available, the illiteracy rate among LEP Alaska Natives of voting age is 40 percent for Aleut-speakers, 28.4 percent for Athabaskan-speakers, 15 percent for Yup'ik-speakers, and 8.2 percent for Inupiat-speakers.⁶⁰ In Arizona, in covered areas for which Census data is available, the illiteracy rate among LEP American Indians of voting age is 25 percent for Navajo-speakers and 6.8 percent for Apache-speakers.⁶¹ In Mississippi, in covered areas for which Census data is available, the illiteracy rate among LEP American Indians of voting age is 34 percent for Choctaw-speakers.⁶² Finally, in New Mexico, in covered areas for which Census data is available, the illiteracy rate among LEP American Indians of voting age is 19.1 percent for Navajo-speakers and 6.7 percent for Apache-speakers; data was not available for speakers of the Pueblo languages.⁶³

In areas with LEP Tribal Elders who are hampered by illiteracy, enumeration generally must be done in-person by a bilingual enumerator fully fluent in the Native language and applicable dialect.

Lack of broadband access and Internet use:

In response to the growing use of technology among the general population, Census 2020 enumeration “will offer the opportunity and encourage people to respond via the Internet...”⁶⁴ However, the digital divide is most profoundly felt among the AIAN population. People residing

⁵⁹ See U.S. Census Bureau, Flowchart of How the Law Prescribes the Determination of Covered Areas under the Language Minority Provisions of Section 203 of the Voting Rights Act 2 (Dec. 5, 2016), available at https://www.census.gov/rdo/pdf/2_PrescribedFlowFor203Determinations.pdf. “Illiteracy” is defined as including those persons who “have less than a 5th grade education.” *Id.*

⁶⁰ See U.S. Census Bureau, Voting Rights Determination File: Section 203 Determinations (Dec. 5, 2016), Public Use Data File and Technical Documentation (Excel spreadsheet of “Determined Areas Only”) (“Section 203 Determination File”), available at https://www.census.gov/rdo/data/voting_rights_determination_file.html. In Alaska, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 30.5 times higher for Aleut-speakers; 21.7 times higher for Athabaskan-speakers; 11.4 times higher for Yup'ik-speakers; and 6.3 times higher for Inupiat-speakers. Compare *id.* with *supra* note 59 and accompanying text.

⁶¹ See Section 203 Determination File, *supra* note 60. In Arizona, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 19.1 times higher for Navajo-speakers; and 5.2 times higher for Apache-speakers. Compare *id.* with *supra* note 59 and accompanying text.

⁶² See Section 203 Determination File, *supra* note 60. In Mississippi, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 25.9 times higher for Choctaw-speakers. Compare *id.* with *supra* note 59 and accompanying text.

⁶³ See Section 203 Determination File, *supra* note 60. In New Mexico, the illiteracy rate among LEP voting-age citizens in covered areas compares to the national illiteracy rate of 1.31 percent as follows: 14.6 times higher for Navajo-speakers; and 6.7 times higher for Apache-speakers. Compare *id.* with *supra* note 59 and accompanying text.

⁶⁴ U.S. Census Bureau, 2020 Census Operational Plan: A New Design for the 21st Century 8 (version 3.0) (Sept. 2017), available at <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan3.pdf>.

in tribal areas have virtually no access to computers or the Internet, with the Federal Trade Commission estimating broadband penetration in tribal communities at less than ten percent.⁶⁵ Not surprisingly, the hardest to count areas for the rural AIAN population are all on reservations or in Alaska Native villages lacking reliable and affordable broadband access. To illustrate that fact, a mapping tool shows how Hard-to-Count Census Tracts correlate with reservations.⁶⁶

During Tribal Consultations between the Census Bureau and tribal members, the Bureau received feedback that “[s]ome tribes reported that internet response is currently not a viable option for members and requested an in-person enumerator – specifically a local, tribal person.”⁶⁷ In particular, connectivity was reported to be an issue “in rural areas including Alaska, Navajo Nation, Pueblos [in New Mexico].”⁶⁸ Even where some broadband access may be available, depressed socio-economic conditions often prevent American Indians and Alaska Natives from having access to or using online resources including the Internet. For example, the cost or inconvenience of driving to a location where Internet access can be obtained, or the cost of getting Internet service in those areas in Indian Country where it may be offered, prevents many American Indians and Alaska Natives from going online.⁶⁹

The digital divide is also a generational phenomenon in Indian Country. In NAVRC’s field hearing in Bismarck, we heard testimony from Montana tribal members who described the widespread use of the Internet and smart phones by younger tribal members. Similarly, the Census Bureau was informed in its Tribal Consultations that while tribes are increasingly using social media to connect with tribal members, those resources are often not generally accessible by Tribal Elders. For online enumeration, Census was informed that where broadband is available, the “younger generation will go online and respond.”⁷⁰ Therefore, any enumeration of tribal lands and those for whom technology is less accessible – particularly Elders – must have alternatives that account for lack of broadband access and use.

Statistical sampling challenges caused by smaller populations:

For those Census programs that rely upon statistical sampling methods, small populations in very sparsely populated areas and communities are another significant challenge the Census Bureau faces in attempting to obtain an accurate count in Indian Country. This issue is most prevalent in the ACS and its related products.

⁶⁵ Parkhurst et al., *The Digital Reality: E-Government and Access to Technology and Internet for American Indian and Alaska Native Populations* 3, available at <https://pdfs.semanticscholar.org/4bb4/f5efcd1cf4ec342b5d45dd824bb10d9bb0f2.pdf>.

⁶⁶ See *Mapping Hard to Count (HTC) Communities for a Fair and Accurate 2020 Census*, available at <http://www.censushardtocompmaps2020.us/>.

⁶⁷ See U.S. Census Bureau, Office of Congressional and Intergovernmental Affairs, PowerPoint Presentation, Briefing on American Indian Alaska Natives 2020 Tribal Consultation Meetings 10 (May 26, 2016) (“Tribal Consultations”), available at <https://www2.census.gov/cac/nac/meetings/2016-05/2016-alexander.pdf>.

⁶⁸ *Id.*

⁶⁹ See Gerry Smith, *On Tribal Lands, Digital Divide Brings New Form of Isolation*, HUFFPOST, Apr. 23, 2012, available at https://www.huffingtonpost.com/2012/04/20/digital-divide-tribal-lands_n_1403046.html.

⁷⁰ Tribal Consultations, *supra* note 67, at 10.

The challenge of surveying small populations became particularly apparent following the dramatic loss of coverage for American Indian languages in the 2011 Section 203 determinations issued by the Census Bureau. In those determinations, the Census Bureau acknowledged that “the sampling error or uncertainty of the estimates of the characteristics needed for Section 203 is a weakness particularly for jurisdictions with small (ACS) samples within the period 2005-2009,” the period used for the 2011 Determinations.⁷¹ Under previous determinations, the Census Bureau used the decennial long form questionnaire sent to one in six U.S. households; in contrast, the ACS questionnaire used in the 2011 Determinations was sent to an average of one in eight U.S. households in the 5-year sample period.⁷² The use of a smaller sample of population has resulted in “larger margins of error than the long-form estimates, particularly for determinations involving the small populations defined in Section 203.”⁷³

This challenge to obtaining an accurate count in Indian Country may be less of an issue for the 2020 Census because of the much more comprehensive enumeration it entails compared to the ACS. Nevertheless, to the extent that the 2020 Census relies on some statistical sampling methods to impute data, it may prove to be more difficult to get estimates in Indian Country because of the sparse population in many Native communities. That limitation reinforces the importance of maximizing the enumeration of all American Indians and Alaska Natives and minimizing the use of sampling in less populated areas.

Recommendations on How to Improve the Count in Indian Country

At first blush, the number and complexity of factors contributing to the undercount of American Indians and Alaska Natives are overwhelming. No single solution can remove all of the barriers to obtaining an accurate count in Indian Country. Rather, a multi-faceted approach must be used for the 2020 Census. To the extent permitted under the law, the enumeration of American Indians and Alaska Natives must be pliable enough to adapt to the circumstances on the ground and the unique needs of each individual Tribe or Native community.

Before offering recommendations on how to improve Census 2020 operations in Indian Country, some comments about the Census Bureau and its staff are in order. My experience with Census Bureau personnel has been as a member of the National Advisory Committee, as a client for special tabulations I have used in voting rights litigation, and as a regular consumer of Census products. Without exception, Census staff with whom I have worked are each impartial, dedicated professionals committed to making sure that every person is counted. Their work is extraordinary. Their operations are run efficiently and effectively, even in the face of dire funding shortfalls that undercut their efforts. Census leadership and the professionals at the

⁷¹ U.S. Census Bureau, Statistical Modeling Methodology for the Voting Rights Act Section 203 Language Assistance Determinations (Dec. 2011) (“Statistical Modeling”), available at http://www.census.gov/rdo/data/voting_rights_determination_file.html.

⁷² See U.S. Census Bureau, Memorandum Regarding the 2011 Determinations 6 (Dec. 2011), available at http://www.census.gov/rdo/data/voting_rights_determination_file.html.

⁷³ Statistical Modeling, *supra* note 71, at 12.

Bureau should be commended for their stewardship in fulfilling their constitutional and statutory mandates.

Census 2020 operations must be adequately funded:

The single greatest threat to an accurate count in Indian Country and elsewhere is the inadequate funding of programs, testing, and support activities for the ramp-up to the 2020 Census. The final appropriation for FY 2017 funding for the Census Bureau was \$1.47 billion, a shortfall of at least \$164 million for the minimal level of funding necessary to keep Census programs running and to adequately prepare for the 2020 Census. The lack of funding has had a deleterious effect on several programs critical to the operation of the decennial census, including:

- The cancellation of planned field tests on the Standing Rock Reservation in North and South Dakota and on the Colville Reservation and Off-Reservation Trust land in Washington State, as well as a third test in Puerto Rico.
- The cancellation of two out of the three dress rehearsal sites in 2018 (the 2018 End-to-End Census Test), including those in Pierce County, Washington, and the Bluefield-Beckley-Oak Hill area of West Virginia, which offered the only opportunities to test special counting methods for rural areas such as those in much of Indian Country. The only dress rehearsal that will now be conducted is in Providence County, Rhode Island, an urban area with a negligible AIAN population.
- “Pauses” and modifications for key 2020 Census activities, including delayed openings of Regional Census Centers, Partnership Program activities, and preparations for outreach and publicity campaigns. These changes could greatly diminish the Bureau’s ability to take an accurate, cost-effective census and is expected to increase the disproportionate undercount of American Indian and Alaska Natives, especially those living in rural, low-income, geographically isolated, and/or linguistically isolated households.
- Shifting funds from other important Census Bureau programs to cover shortfalls in activities essential to the 2020 Census.

Although recent continuing resolutions have included anomalies for increased Census funding, those funding levels still fall far short of where they need to be to obtain an accurate count in Indian Country.

The Administration’s FY 2018 budget request for the Census Bureau initially was just \$1.497 billion, a mere two percent (\$27 million) increase over the already underfunded FY 2017 level. The Administration subsequently adjusted its request to be \$1.654 billion, adding \$187

million for 2020 Census activities. However, even the adjusted request is substantially less than what is needed for the decennial census ramp-up.

NARF joins the Leadership Conference and partnering organizations in recommending an appropriation for the Census Bureau of at least \$1.848 billion for FY 2018. That figure reflects an increase of \$164 million over the Administration's adjusted budget. It would address, in part, the impact that underfunding from FY 2017 has had on activities that are critical to Census 2020 operations, including:

- **An additional \$24 million for Current Surveys and Programs.** The adjusted request would authorize a total discretionary appropriation of \$270 million, equal to the amount identified by the Senate Appropriations Committee and the FY 2017 appropriation.
- **An additional \$50 million for contingency operations.** This appropriation would be added to the contingency fund proposed by Commerce Secretary Ross to account for operational issues that may arise in preparation for the 2020 Census.
- **An additional \$80 million for the communications campaign.** The Integrated Partnership and Communications (IPC) contract is behind schedule because of lack of funding in FY 2017. These funds are necessary to give the IPC the resources for identifying and communicating effective messages to Indian Country about the importance of participating in the 2020 Census.
- **An additional \$10 million to increase the number of Partnership Specialists to 200.** Currently, there are just 43 Partnership Specialists who are responsible for all outreach and publicity for every national, state, regional, local and tribal organization. That number is woefully short of the staff needed to communicate and educate trusted partners in the American Indian and Alaska Native communities about the 2020 Census, particularly considering the factors that make the AIAN population Hard-to-Count.

NARF likewise supports the Leadership Conference's request for a 20 percent increase in the number of Area Census Offices. The increase is needed to ensure that sufficient personnel are available to conduct what is expected to be a very high need for Nonresponse Follow-Up among AIAN persons, especially those residing in Hard-to-Count Census Tracts.

Funding for field tests of the 2020 Census on tribal lands must be restored:

The cancelled Census Tests on Tribal Lands would have refined methods for counting people in tribal areas lacking street addresses, test methods of making in-person counts in AIAN households, and determine where and how to use oversampling to counteract the undercount

facing Native people living on reservations and in Native villages.⁷⁴ The field tests on the Colville and Standing Rock Reservations should be restored expeditiously to refine the data collection methods in Indian Country for the 2020 Census.

The NCT Report illustrates the many challenges the Census Bureau and other federal agencies face in the enumeration of the AIAN population. ***Among all of the population groups included in the 2015 NCT, the AIAN population experienced the lowest 2010 Census mail response rate, at 57.8 percent.***⁷⁵ The lack of mailing addresses for many Native peoples on tribal lands had an impact on how the 2015 NCT was conducted in Indian Country. As the Census Bureau explained, its report “includes only self-responders in areas with relatively high address mailability. Recall that the 2015 NCT did not include a Nonresponse Followup operation or any enumeration of areas with high concentrations of nonmailable addresses.”⁷⁶ Similar problems will undoubtedly reoccur, which will only be exacerbated if no field tests are conducted in Indian Country in preparation for the 2020 Census.

The Federal Race and Ethnicity Standards and Census 2020 questionnaire must be updated to reflect AIAN concerns:

Another issue of particular concern to organizations and individuals advocating on behalf of the American Indian and Alaska Native community is the absence of any decision on revisions to the Federal Race and Ethnicity Standards. The Race and Ethnicity Standards used by every federal agency for surveys and statistical research – including enumeration by the Census Bureau through the decennial census and data-gathering through other periodic surveys such as the ACS – are very outdated. The Standards were last changed in 1997. They do not reflect changing demographics, nor do they account for inefficiencies that have become apparent in both the 2000 Census and 2010 Census that contributed to the undercount of the AIAN population.

NARF and other members of NAVRC were cautiously optimistic about the prospects for effective changes to the Standards when OMB published its notice inviting comments to be considered by the Federal Interagency Working Group.⁷⁷ We submitted written comments in response to the notice, agreeing with the recommendation made by career staff at the Census Bureau for a separate “write-in line to collect detailed AIAN responses, rather than the three conceptual checkboxes and a write-in line, on paper questionnaires.”⁷⁸

⁷⁴ U.S. Census Bureau, 2017 Census Test: Preparing for the 2020 Census, *available at* https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2017%20Census%20Tests/2017_census_test/colville_factsheet.pdf.

⁷⁵ NCT Report, *supra* note 25, at 32, table 2.

⁷⁶ *Id.* at 58.

⁷⁷ See Office of Management and Budget, Proposals From the Federal Interagency Working Group for Revision of the Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 82 Fed. Reg. 12,242 (Mar. 1, 2017).

⁷⁸ See NCT Report, *supra* note 25, at 86.

Although it was widely expected that the Federal Interagency Working Group would issue revisions to the Federal Race and Ethnicity Standards at the end of 2017, that did not happen. Instead, to date, no update on the Standards or explanation for the delay has been forthcoming from the Working Group. That radio silence placed the Census Bureau in a tenuous position to meet its mandate under federal law. As the Bureau has explained, the “Census Bureau needed to make a decision on the design of the race and ethnicity questions by December 31, 2017 in order to prepare 2020 Census systems, and deliver the final 2020 Census question wording to Congress by March 31, 2018.”⁷⁹

As a result, currently the Census Bureau is planning on continuing “to use two separate questions for collecting data on race and ethnicity in the 2018 End-to-End Census Test, and as the proposed format for the 2020 Census.”⁸⁰ It is true that despite the absence of changes to the 1997 Standards, the Bureau will make some modifications to the 2020 Census questionnaire. As the Bureau has explained, “The race and ethnicity questions include several design changes that were tested over the past decade in effort to improve the designs from the 2010 Census.”⁸¹ While that will not result in a change to the current 1997 definition of “American Indian or Alaska Native,”⁸² it will result in one change on the questionnaire: “adding examples for the American Indian or Alaska Native racial category.”⁸³

The career staff at the Census Bureau should be applauded for their efforts to make the most out of a bad situation. They are to be commended for making what modifications they believe they can to the questionnaires being used for the 2018 End-to-End Test and the 2020 Census under the outdated 1997 Federal Race and Ethnicity Standards. However, due to the inaction by the Federal Interagency Working Group and the limitations imposed on the Bureau by federal law (and particularly the 1997 Standards), the proposed change does not go far enough for the AIAN population.

The NCT tested three approaches: separate questions on race and ethnicity; a combined question for race and ethnicity with write-in boxes; and a combined question with checkboxes. Among AIAN respondents completing the survey online, the response rate was highest for the combined question with detailed checkboxes, with 73 percent providing detailed responses. Notably, this response rate was significantly lower than the next closest population group surveyed through the Internet, Native Hawaiian and Pacific Islander, at 89.9 percent.⁸⁴

⁷⁹ Albert E. Fontenot, Jr., Associate Director for Decennial Census Programs, Memorandum for Record Regarding Using Two Separate Questions for Race and Ethnicity in 2018 End-to-End Census Test and 2020 Census 1 (2020 Census Program Memorandum Series: 2018.02) (Jan. 26, 2018) (“Census Memo 2018.02”).

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² The 1997 Standards define the AIAN population to include a “person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.” *Id.*

⁸³ *Id.*

⁸⁴ NCT Report, *supra* note 25, at 49 & table 10.

Largely because of the challenges in enumerating Native peoples residing in Hard-to-Count Census Tracts, it should be expected that a large proportion of the AIAN population will respond to the 2020 Census using a paper survey. However, the 2015 NCT report found that the response rate among AIAN persons surveyed using the paper format was lowest for the combined question with detailed checkboxes approach. Only 54.1 percent of AIAN respondents provided detailed responses using that approach, compared to 70.1 percent for the combined question with write-in response areas approach and 64.4 percent for the separate question approach.⁸⁵

The Census Bureau has explained that the lower response rate using the paper format may have been because of the inclusion of “three additional AIAN checkboxes below the major category checkbox,” namely “American Indian, Alaska Native, and Central or South American Indian.” It is possible that the inclusion of these three existing OMB categories may have discouraged respondents from completing the write-in line, as the Census Bureau has suggested.⁸⁶ The write-in line was included because the Census Bureau acknowledged that if it “were to employ the six largest Indian groups and Alaska Native groups as checkboxes, they would represent only about 10 percent of the entire AIAN population.” Doing so would effectively offer no means of identification for the “hundreds of very small detailed AIAN tribes, villages, and indigenous groups for which Census Bureau data is collected and tabulated.”⁸⁷ That conclusion is reflected in the Bureau’s finding that 68.1 percent of all AIAN persons surveyed in the 2015 NCT that provided their tribal affiliation or association in the write-in space were not members of the six largest AIAN groups.⁸⁸

As a result, the Census Bureau noted: “Additional findings from this research indicate that it is optimal to use one write-in line to collect detailed AIAN responses, rather than the three conceptual checkboxes and a write-in line, on paper questionnaires. This research showed that the introduction of conceptual checkboxes (i.e., American Indian, Alaska Native, and Central/South American Indian) decreased detailed reporting for the AIAN category in paper data collections.”⁸⁹ Unfortunately, it appears that approach will not be used for the 2020 Census because of the inaction by the Federal Interagency Working Group in failing to update the 1997 Standards.

Just as NARF did in its written comments, I agree with the approach proposed by the Census Bureau in the NCT, and recommend the following format to be used on the 2020 Census questionnaire: (1) provide a write-in line without the three checkboxes for the three AIAN categories under the 1997 OMB standards; (2) provide examples (as the 2015 NCT Report has suggested and as the Bureau has reiterated in its January 26, 2018 Memo) to allow AIAN respondents to understand what information is being requested on the write-in line; and

⁸⁵ *Id.* at 50 & table 11.

⁸⁶ *Id.* at 50.

⁸⁷ *Id.* at 52.

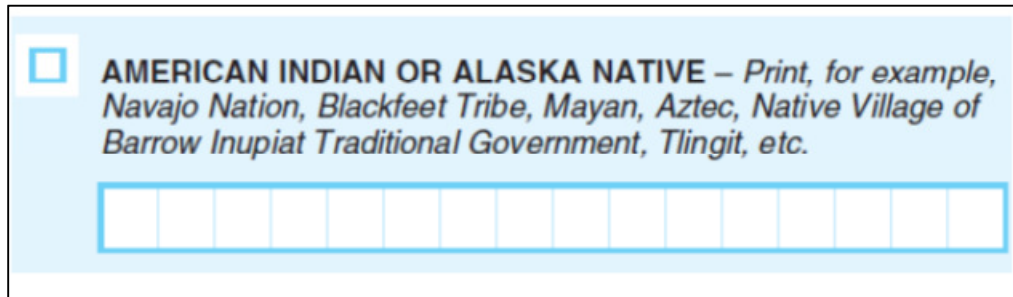
⁸⁸ *See id.* at 55 & table 14.

⁸⁹ *See id.* at 86.

(3) provide enough space to allow respondents to provide multiple responses if they identify with more than one tribe or village.

The Census Bureau provided an illustration of the suggested question format for respondents identifying as Alaska Native or American Indian:

Figure 3. Proposed AIAN Question Format for the 2020 Census Questionnaire.



Only two modifications would need to be made to this question format. First, more lines need to be added for responses to be written in because some tribes and Native villages have long names and many respondents identify or affiliate themselves with more than one tribe or Native village. Second, input we have received at NAVRC meetings and at the field hearings indicates that two of the examples, “Mayan” and “Aztec,” seem outmoded with a sparse population compared to other tribes and Native villages.

Even if the Census Bureau cannot make these changes because of the 1997 Standards, I encourage Members of Congress to authorize these changes to the question format for the 2020 Census, with any further adjustments recommended by the career professionals at the Bureau.

Perhaps even more so than other population groups, the AIAN population group is not monolithic, but instead is comprised of a broad and diverse group of distinct tribes, associations, clans, or other affiliations. Individual Native persons may self-identify differently than others within their community. Providing a write-in line is most consistent with respecting that self-identification of individuals and the Nations in which they live or with which they are affiliated. Because many Native persons belong to and identify with more than a single tribe or Native village, they must be permitted to provide all of that information in any federal survey. Furthermore, as the Census Bureau’s example illustrates, even many of the single responses will require additional space to provide a response because of their length (e.g., “Native Village of Barrow Inupiat Traditional Government”).

On a related note, it is critical that both the instructions and the enumerators be concise, clear, and uniform in their explanation of what information is being requested of each Native person being surveyed. Variations in local customs, practices, and cultural differences must be part of any federal survey being conducted, to ensure it is effective. That is precisely why supplemental studies, such as the planned Census Test on Tribal Lands, must be completed by federal agencies that will be conducting surveys of the AIAN population. It would be a travesty

to have the 2020 Census Questionnaire tested in Indian Country for the first time on Census Day in 2020.

Additional resources must be allocated for outreach to Indian Country:

It is a tremendous credit to the professionalism of Census staff that they have been actively engaged with tribal leaders and members to address issues impacting the enumeration in Indian Country through a series of tribal consultations in the ramp-up to the 2020 Census. Beginning in October 2015, the Census Bureau held tribal consultations at locations around the country.⁹⁰ One of the important results from those consultations was the Bureau's decision not to ask about tribal enrollment on the 2020 Census questionnaire.⁹¹ The tribal consultations have helped bridge some of the gulf that separates the Tribes and Native peoples from the federal government. But those efforts must be ongoing to build on the nascent relationships that have developed. And equally important, those efforts must be funded by Congress.

In addition, more resources must be committed to outreach and partnership programs in Indian Country. Many of the elements proposed in the Census Bureau's Integrated Communications Plan to target the AIAN population will be ineffective in the most isolated parts of Indian Country. For example, the proposal identifies traditional modes of communication that are either completely unavailable in Indian Country or are inaccessible to large numbers of people.⁹² Television and radio are not available to many Alaska Native communities and Indian reservations. For example, many of NARF's client villages in the Bethel, Dillingham, Kuslivak, and Yukon-Koyukak Census Areas reported that they receive no radio signals and instead have to rely on announcements being made over the village Citizens Band (CB) radio. Billboards, newspapers, and magazines likewise are not available or used in many places. Broadband access is non-existent on a majority of the tribal lands in rural areas. A "one-size-fits-all" approach, such as what is suggested in the Bureau's outreach planning, simply will not work in Indian Country.

The Census Bureau also does not have program funding in place to communicate in Native languages, despite the fact that English is not widely spoken or used in many parts of Indian Country. ***The Bureau's services in non-English languages for past Census – as well as for the planned 2020 Census – do not include a single American Indian or Alaska native language.*** All of the language services offered have been for Asian and European languages.⁹³ The Census Bureau intends to rely exclusively on "Partnership Efforts" to reach even widely used American Indian and Alaska Native languages, such as Navajo and Yup'ik.⁹⁴

⁹⁰ See Tribal Consultations, *supra* note 67, at 2, 5.

⁹¹ See *id.* at 11.

⁹² See U.S. Census Bureau, Integrated Communications Plan (version 1.0) (June 2, 2017) ("Communications Plan"), available at https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020_integrated_COM_plan.pdf.

⁹³ See *id.* at 74-77.

⁹⁴ See *id.* at 76-77.

Effective outreach and publicity in Indian Country requires a personal approach that will be tailored to the distinct cultural and linguistic needs of each Alaska Native village or reservation. Census publicity should be translated into Native languages and account for distinct dialectical differences through the use of the same methods that prove effective for language assistance in voting: translations by panels of qualified bilingual translators and confirmation of the quality of translations through testing among community members.

Outreach coordinators will need to be hired from village and tribal communities to identify, plan, and execute the most effective methods of communicating about the importance of the Census and how to ensure an accurate count is obtained. In some places, that may require making announcements over a CB radio. In other places, it might be to discuss the Census during tribal council meetings or other community gatherings. Tribal social service organizations can be engaged to disseminate information and answer questions.

These suggestions all require funding to tailor outreach and publicity campaigns to Native communities. It is understandable that there are efforts being undertaken to minimize costs associated with conducting federal surveys using race and ethnicity data. However, those efforts cannot come at the expense of accurate and complete measurements of the AIAN population. They also cannot require socio-economically disadvantaged Native villages and Tribes to bear the brunt of the burden and be compelled to engage in self-help to ensure they are counted. As one of the Hardest-to-Count populations, additional resources beyond those already allocated for the 2020 Census must be directed towards Indian Country.

Trusted American Indians and Alaska Natives should be enumerators:

The most frequent input on the Census that we have received during NAVRC's field hearings is that the enumeration on tribal lands should be conducted by Natives, not non-Natives. This issue came up in response to a proposal by the Census Bureau to use postal workers as enumerators. Postal workers in Indian Country often are non-Natives. The Bureau has considered employing postal workers to conduct the Census because, it was reasoned, they would most likely know where people live and could minimize some of the undercount for those with non-traditional mailing address.

American Indians and Alaska Natives have significant concerns about the postal worker proposal for a variety of reasons. They expressed extreme discomfort with the prospect of having to share some of their most personal and sensitive information (e.g., their ages, education and literacy levels, household income) with someone who they may see every day delivering mail. The consensus was that such an approach would likely discourage participation or accurate disclosure of information to Census enumerators. Moreover, because so many of AIAN people use non-traditional mailing methods such as post office or general delivery boxes shared by multiple families or generations of a single family, postal workers frequently will have no idea of how many people live in a particular household, or possibly even where the household is located. If the postal worker happens to be a non-Native, which many (and perhaps even most) would be, these concerns would be even greater.

The most accepted suggestion is that enumerators for each tribe or Native village should be hired from that tribe or village and not from the outside (including from other tribes or villages). Tribal leaders should be consulted to identify the people most trusted in their community to conduct an in-person enumeration. This approach would have the added benefits of using someone who already knows where people live and whose trusted reputation is more likely to lead to participation in the Census and elicit accurate responses.

Americans Indians and Alaska Natives should train enumerators in Indian Country:

Related feedback from tribal communities is that American Indians and Alaska Natives should be hired to prepare and provide all training for Census enumeration in Indian Country. As the earlier example highlights,⁹⁵ non-Native trainers who are training Native enumerators on how to be culturally sensitive in Indian Country are not well received. Nor are Census workers who wear suits when they conduct in-person training or door-to-door enumeration. Some of the best trainers to help prepare for Census 2020 can be readily drawn from Native professionals who work in tribal or community offices, or from among the local Native educators.

Census 2020 and the Bureau's leadership must be free of the taint of partisanship:

The Census Bureau and its leadership have, of necessity, been free of partisan taint in the Bureau's operations. The Bureau's mandate under Article I, Section 2 of the Constitution is to provide an accurate enumeration of all people in the United States, to ensure the proper apportionment among the several states. It has other surveying and data-gathering responsibilities under many federal statutes. To promote mandated compliance with its data-gathering efforts, it is essential that the American public have faith that Census Bureau leadership and professionals will perform their duties free of any partisanship or partisan influence.

Although the Deputy Director position does not require Senate confirmation, it nevertheless is critical to the fair and accurate functioning of the Census Bureau. The Deputy Director will oversee operational control over the 2020 Census. Historically, candidates to fill that position have been career statisticians who have many years of experience as Census Bureau employees. That approach has served the Bureau and the country well. The Census has been managed by neutral, impartial, non-partisan professionals who are intimately familiar with the Bureau's operations and are well-respected by Bureau staff. Through such exacting leadership, Census products are accepted and form the very cornerstone of the quality data that contributes to ensuring we have government representative of all the people. That tradition of non-partisanship and professionalism must continue, free from the political viewpoints of the person appointed to fill the Deputy Director position.

The same concerns hold true when the Administration selects its nominee for the Bureau's Director. It has now been over seven months since Director John Thompson resigned. Director Thompson, like his predecessors at the Bureau, performed his duties admirably and free of influence by any political party. Like the Deputy Director, any nominee who is named to fill

⁹⁵ See *supra* note 17 and accompanying text.

the Director vacancy must be a competent and experienced manager who has effectively overseen a statistical operation and who has the confidence of career Bureau staff and the American public to do so free of partisanship and political viewpoint.

Conclusion

Members of Congress and the leadership and professionals at the Census Bureau face many challenges in preparing for Census 2020. Those challenges are even greater in their collective efforts to ensure that all of the First Americans – American Indians and Alaska Natives – are fully and accurately counted. But they are not insurmountable.

NARF and its partners in the NAVRC look forward to working with this Committee to overcome the barriers to making Indian Country count in the 2020 Census. The data derived from the Census is too critical to all Americans – and Native Americans in particular – to undercount any population. It serves as the bedrock of our government, providing the population count used to determine the number of representatives each state will have, as well as the equal representation of voters in each community. It provides data that is critical to efforts to secure compliance with our civil rights laws. It is vital to offering tribal governments and Native peoples equal access to federal, state, and local funding that is essential to helping them to secure the American dream. In summary, we all need to work together to get the count right.

Thank you very much for your attention. I will welcome the opportunity to answer any questions you may have.