

# THE RISKS AND REWARDS OF CONDUCTING A CENSUS IN THE DIGITAL AGE

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## I. INTRODUCTION

Every decade, the U.S. Census Bureau undertakes its constitutional mandate to count every person once, only once, and in the right place.<sup>1</sup> The 2020 Census is the nation’s first “digital” decennial census; for the first time in its history, the Bureau has invited the majority of the public to participate using an online self-response portal.<sup>2</sup> Along with the new Internet self-response option, the Bureau has pioneered and adopted cutting-edge

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<sup>1</sup> Jae June Lee & Cara Brumfield, *Fulfilling a Constitutional Mandate: An Overview Of How Census Data Are Used to Apportion The House of Representatives*, GEORGETOWN CTR. ON POVERTY & INEQUALITY: ECON. SECURITY & OPPORTUNITY INITIATIVE (Apr. 2020), <https://www.georgetownpoverty.org/wp-content/uploads/2020/05/GCPI-ESOI-Congressional-Apportionment-Fact-Sheet-20200507.pdf> [<https://perma.cc/HDC2-RWDU>].

<sup>2</sup> In addition to the online self-response option, the public has opportunities to respond by phone or mail.

methodologies and technologies that may help contain overall costs while providing significant gains in efficiency of the 2020 Census and the quality of the published statistics.<sup>3</sup>

While every decennial census is a vast and staggeringly complex undertaking, census taking in the digital age presents particular challenges and risks to achieving a fair and accurate count. These include the “digital divide” (i.e. the demographic gaps in access to and use of the Internet),<sup>4</sup> cybersecurity risks,<sup>5</sup> the potential for the use of commercial and third-party data sets to “de-anonymize” (or reconstruct and reidentify) census respondents,<sup>6</sup> and the threat of disinformation campaigns reminiscent of those during the 2016 U.S. presidential elections.<sup>7</sup> Some experts fear the Bureau did not do enough to mitigate and manage those risks in the lead up to the 2020 Census.<sup>8</sup>

Amidst these tech-related challenges and risks, the COVID-19 pandemic has also created obstacles that are unprecedented both in nature and magnitude, causing the Bureau to adjust census operations and request

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<sup>3</sup> See generally CASEY GOLDBALE & INDI DUTTA GUPTA, THE LEADERSHIP CONFERENCE EDUC. FUND & GEORGETOWN CTR. ON POVERTY & INEQUALITY: ECON. SEC. & OPPORTUNITY INITIATIVE, COUNTING EVERYONE IN THE DIGITAL AGE: THE IMPLICATIONS OF TECHNOLOGY USE IN THE 2020 DECENNIAL CENSUS FOR THE COUNT OF DISADVANTAGED GROUPS (2017), [https://www.georgetownpoverty.org/wp-content/uploads/2017/10/LCEF\\_2020\\_Census\\_Poll\\_Report-Final-002.pdf](https://www.georgetownpoverty.org/wp-content/uploads/2017/10/LCEF_2020_Census_Poll_Report-Final-002.pdf) [<https://perma.cc/EE7Q-YHHE>]; U.S. CENSUS BUREAU, 2020 CENSUS OPERATIONAL PLAN, VERSION 4.0 (December 2018), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf> [<https://perma.cc/23ML-ATYD>].

<sup>4</sup> CARA BRUMFIELD & SOPHIE KHAN, GEORGETOWN CTR. ON POVERTY & INEQUALITY: ECON. SEC. & OPPORTUNITY INITIATIVE, COUNTING RURAL AMERICA: A GUIDE TO THE 2020 CENSUS (Oct. 10, 2018), <https://www.georgetownpoverty.org/wp-content/uploads/2018/10/GCPI-ESOI-Counting-Rural-America-20181010.pdf> [<https://perma.cc/MYR4-QHBA>].

<sup>5</sup> Hansi Lo Wang, *Despite Cybersecurity Risks And Last-Minute Changes, The 2020 Census Goes Online*, NPR (Mar. 2, 2020), <https://www.npr.org/2020/03/02/807913222/despite-cybersecurity-risks-and-last-minute-changes-the-2020-census-goes-online> [<https://perma.cc/S4YP-WB3W>].

<sup>6</sup> Jeffrey Mervis, *Can a Set of Equations Keep U.S. Census Data Private?*, SCIENCE (Jan. 4, 2019), <https://www.sciencemag.org/news/2019/01/can-set-equations-keep-us-census-data-private#> [<https://perma.cc/78VV-JBM2>].

<sup>7</sup> Ron S. Jarmin, *Why the Census Bureau is Establishing a “Trust & Safety” Team*, U.S. CENSUS BUREAU (Dec. 17, 2019), [https://www.census.gov/newsroom/blogs/random-samplings/2019/12/why\\_the\\_census\\_bureau.html#](https://www.census.gov/newsroom/blogs/random-samplings/2019/12/why_the_census_bureau.html#) [<https://perma.cc/VN4B-5TYH>].

<sup>8</sup> See U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-19-140, ADDITIONAL STEPS NEEDED TO FINALIZE READINESS FOR PEAK FIELD OPERATIONS (Dec. 2018), <https://www.gao.gov/assets/700/695874.pdf> [<https://perma.cc/85BP-VGAK>]; Nick Brown, *Special Report: 2020 U.S. Census Plagued by Hacking Threats, Cost Overruns*, REUTERS (Dec. 4, 2019), <https://www.reuters.com/article/us-usa-census-technology-specialreport/special-report-2020-u-s-census-plagued-by-hacking-threats-cost-overruns-idUSKBN1Y81H8> [<https://perma.cc/3NUD-LLCK>].

revisions to statutory reporting deadlines.<sup>9</sup> Notably, the Bureau delayed many of the critical in-person field operations designed to reach households with unreliable Internet access and households that have not self-responded to the 2020 Census.<sup>10</sup> These new circumstances have highlighted the benefits of the Bureau's new design for the 2020 Census—such as the online self-response option and the use of big data—while also increasing the Bureau's reliance on them, placing additional pressure on the 2020 Census's innovations.<sup>11</sup> Yet, the Bureau remains committed to its goal to “count everyone once, only once, and in the right place”.<sup>12</sup>

The stakes for getting the 2020 Census right could not be higher. The decennial census is the statistical backbone of our nation and its fairness and accuracy is a civil rights issue at the heart of our democracy. Census data is used for the apportionment of seats in the House of Representatives and redistricting at all levels of government; the census is essential to determining the appropriate allocation of power within our political system. Census data is also used for the enforcement of provisions in the Voting Rights Act and other laws that help protect against discrimination.<sup>13</sup> When groups are not fully counted in the census, not only is their political power diluted, but their communities may not get their fair share of funding for important programs that support economic security, health, education, and more. In fact, the allocation of over \$1.5 trillion dollars in federal funds is guided by census

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<sup>9</sup> Informational Release, U.S. Census Bureau, 2020 Census Operational Adjustments Due to COVID-19 (May 7, 2020), <https://2020census.gov/content/dam/2020census/materials/news/2020-census%20operational-adjustments-long%20version.pdf> [<https://perma.cc/ZG9S-BH7B>].

<sup>10</sup> Press Release, U.S. Census Bureau, Census Bureau Statement on Modifying 2020 Census Operations to Make Sure College Students are Counted (Mar. 15, 2020), <https://www.census.gov/newsroom/press-releases/2020/modifying-2020-operations-for-counting-college-students.html> [<https://perma.cc/D5E5-HJBS>].

<sup>11</sup> Kenneth Prewitt, *The Coronavirus Could Change the Way We Take the Census*, N.Y. TIMES (Mar. 11, 2020), <https://www.nytimes.com/2020/03/11/opinion/contributors/census-coronavirus.html> [<https://perma.cc/7ESQ-CJAU>]. In early May 2020, the Bureau announced plans for a phased approach resuming field operations in select geographic locations. Press Release, U.S. Census Bureau, Census Bureau to Resume Some 2020 Census Field Operations in Select Locations (May 04, 2020), <https://2020census.gov/en/news-events/press-releases/resume-field-operations.html> [<https://perma.cc/8R9C-NR3Q>].

<sup>12</sup> Ron S. Jarmin, *Counting Everyone Once, Only Once and in the Right Place*, U.S. CENSUS BUREAU (Nov. 5, 2018), [https://www.census.gov/newsroom/blogs/director/2018/11/counting\\_everyoneon.html](https://www.census.gov/newsroom/blogs/director/2018/11/counting_everyoneon.html) [<https://perma.cc/K6BV-8ASK>].

<sup>13</sup> See CARA BRUMFIELD, CASEY GOLDVALE, & CHRISTOPHER BROWN, GEORGETOWN CTR. ON POVERTY & INEQUALITY: ECON. SEC. & OPPORTUNITY INITIATIVE, RACE & ORIGIN QUESTIONS IN CONTEXT: UNDERSTANDING THE 2020 CENSUS (June 2019), <https://www.georgetownpoverty.org/wp-content/uploads/2019/06/GCPI-ESOI-Race-and-Origin-Questions-in-Context-20190606.pdf> [<https://perma.cc/5K9C-4PBZ>].

data.<sup>14</sup> Put simply, when the count is not fair and accurate, the groups who are undercounted lose out the most.

That is why outreach to “hard to count” groups is so important. Hard to count groups are those who have been historically undercounted in the decennial census, such as people of color, people with disabilities, people experiencing homelessness,<sup>15</sup> renters,<sup>16</sup> recent and/or undocumented immigrants, and people displaced by disasters.<sup>17</sup> The Census Bureau finds certain groups harder to count for a number of reasons, including language barriers, distrust of the federal government, and housing units which are hard to find.<sup>18</sup>

Census experts have raised both questions about the effectiveness of the Bureau’s outreach campaigns to encourage participation among people of color, and doubts about the Bureau’s ability to hire enough culturally and linguistically competent enumerators to follow up with households who do not self-respond.<sup>19</sup> The NAACP filed a lawsuit claiming that census underfunding would “result in a massive and differential undercount of communities of color.” and that “[s]uch a dramatic undercount will especially dilute the votes

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<sup>14</sup> Andrew Reamer, *Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds*, GEO. WASH. INST. PUB. POL’Y (Feb. 10, 2020), <https://gwipp.gwu.edu/counting-dollars-2020-role-decennial-census-geographic-distribution-federal-funds> [https://perma.cc/3YLZ-NFZE].

<sup>15</sup> CARA BRUMFIELD, GEORGETOWN CTR. ON POVERTY & INEQUALITY: ECON. SEC. & OPPORTUNITY INITIATIVE, COUNTING PEOPLE EXPERIENCING HOMELESSNESS: A GUIDE TO 2020 CENSUS (Sept. 17, 2018), <https://www.georgetownpoverty.org/wp-content/uploads/2018/09/GCPI-ESOI-Counting-People-Experiencing-Homelessness-20180904.pdf> [https://perma.cc/A76R-NW9B]; *Hard-to-Count Communities in the 2020 Census*, GEO. CTR. ON POVERTY & INEQ.: ECON. SECURITY & OPPORTUNITY INITIATIVE, <https://www.georgetownpoverty.org/issues/democracy/census-2/hard-to-count/> [https://perma.cc/PZ89-J5EA].

<sup>16</sup> THE LEADERSHIP CONFERENCE EDUC. FUND & GEORGETOWN CTR. ON POVERTY & INEQUALITY: ECON. SEC. & OPPORTUNITY INITIATIVE, WILL YOU COUNT? RENTERS IN THE 2020 CENSUS (July 1, 2018), <https://www.georgetownpoverty.org/wp-content/uploads/2018/08/Renters-HTC-1.pdf> [https://perma.cc/D582-3DXA].

<sup>17</sup> *Hard-to-Count Communities in the 2020 Census*, *supra* note 15.

<sup>18</sup> MARYANN M. CHAPIN, U.S. CENSUS BUREAU, 2020 CENSUS: COUNTING EVERYONE ONCE, ONLY ONCE, AND IN THE RIGHT PLACE (Nov. 2018), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/pmr-materials/10-19-2018/pmr-hard-to-count-2018-10-19.pdf> [https://perma.cc/KVW8-RDVM].

<sup>19</sup> Igor Derysh, *The Coronavirus Is Upending the Census—And That Could Undermine Democracy for a Decade*, SALON (Mar. 21, 2020, 2:00 PM UTC), <https://www.salon.com/2020/03/21/the-coronavirus-is-upending-the-census--and-that-could-undermine-democracy-for-a-decade/> [https://perma.cc/Z7P7-VF33]; U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-20-368R, INITIAL ENUMERATION UNDERWAY BUT READINESS FOR UPCOMING OPERATIONS IS MIXED (Feb. 2020) <https://www.gao.gov/assets/710/704524.pdf> [https://perma.cc/44GS-3WPT].

of racial and ethnic minorities, deprive their communities of critical federal funds, and undervalue their voices and interests in the political arena.”<sup>20</sup>

Fortunately, there is also a groundswell of creative, research-based, and effective campaigning to Get Out The Count (GOTC).<sup>21</sup> National and local organizations are promoting census participation by raising awareness and helping the public understand its importance—and benefiting from social media and other tech-based approaches in order to do so.<sup>22</sup> Trusted messengers who know their communities have an important role to play in encouraging census participation.<sup>23</sup>

Will the efforts of the Census Bureau and the vast network of GOTC advocates be enough to ensure a fair and accurate census count this year? Only time will tell.

## II. THE ONLINE RESPONSE OPTION

The Bureau has offered—for the first time—an option for households to self-respond to the census using an online self-response portal. As a result of declining overall response rates for surveys and censuses<sup>24</sup> and the complexity of counting an increasingly large and diverse population,<sup>25</sup> the costs of undertaking the decennial census have grown significantly over the past decades. In an effort to control these escalating operational costs and make participation in the census more convenient, the Bureau introduced the new Internet self-response option—alongside other innovations—as a key feature of the 2020 Census architecture that is designed to cost less per household than the 2010 Census.<sup>26</sup> Starting mid-March 2020, most households received an invitation in the mail with instructions for how to respond to the

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<sup>20</sup> Third Amended Complaint at 3, *NAACP v. Bureau of the Census*, Case No. 8:18-cv-00891-PWG (D. Md. Jan. 10, 2020).

<sup>21</sup> See *Get Out the Count Toolkit*, CENSUS COUNTS 2020, <https://censuscounts.org/gotc-toolkit/> [<https://perma.cc/W6ZA-N7GS>].

<sup>22</sup> *Digital Organizing Trends, Tips and Tools for GOTC Outreach*, CENSUS COUNTS 2020, <https://censuscounts.org/digital-organizing/> [<https://perma.cc/27VK-524P>].

<sup>23</sup> *Get Out the Count Outreach and Best Practices*, CENSUS COUNTS 2020, <https://censuscounts.org/gotcplan/> [<https://perma.cc/TUH6-K53R>].

<sup>24</sup> KYLEY MCGEENEY ET AL., U.S. CENSUS BUREAU, 2020 CENSUS BARRIERS, ATTITUDES, AND MOTIVATORS STUDY SURVEY REPORT, VERSION 2.0 6 (Jan. 24, 2019), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2020-report-cbams-study-survey.pdf> [<https://perma.cc/YY4S-CGQP>].

<sup>25</sup> U.S. CENSUS BUREAU, *supra* note 3.

<sup>26</sup> See U.S. CENSUS BUREAU, *Executive Summary*, 2020 CENSUS LIFE-CYCLE COST ESTIMATE VERSION 1.0 1 (Dec. 21, 2017), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-cost-estimate1.pdf> [<https://perma.cc/8VLU-CUDB>].

2020 Census.<sup>27</sup> Households may also choose to respond by phone or by mail.<sup>28</sup> Households that have not self-responded will receive several reminders from the Census Bureau.<sup>29</sup>

Although the online response option will make responding to the census easier and more convenient for many people, hard to count communities are among those likely to have limited Internet access and those more vulnerable to hacks and malware. For example, individuals who lack access to a reliable Internet connection at home may also have limited digital literacy and rely on older or public devices with less robust protections against online threats.<sup>30</sup>

Census Bureau staff and census stakeholders have been wary of a major website failure similar to the flawed launch of the healthcare.gov website—which would dramatically interrupt operations and reduce self-response. Australia’s first census to be conducted primarily online experienced a major failure when the website used to collect responses went down after a Distributed Denial of Service (DDoS) attack.<sup>31</sup> To minimize the risks of such a failure, the Bureau consulted and worked with government advisors from the US Digital Services and 18F, an office within the General Services Administration.<sup>32</sup> The Bureau has taken additional steps to address concerns, when possible, or otherwise manage risks identified by the Government Accountability Office and others.<sup>33</sup>

Due to “social distancing” measures adopted by state and local authorities to slow the spread of the COVID-19 pandemic,<sup>34</sup> the Census

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<sup>27</sup> Informational Release, U.S. Census Bureau, How the 2020 Census Will Invite Everyone to Respond, (April 16, 2020), <https://www.census.gov/library/fact-sheets/2020/dec/2020-invites-everyone.html> [<https://perma.cc/KU2T-XSWP>].

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> Jessica Vitak et al., “*I Knew It Was Too Good To Be True*”: The Challenges Economically Disadvantaged Users Face in Assessing Trustworthiness, Avoiding Scams, and Developing Self-Efficacy Online, 2 PROC. ACM ON HUM.-COMPUTER INTERACTION, at 176:1 (2018), <https://dl.acm.org/doi/pdf/10.1145/3274445> [<https://perma.cc/VRH5-JEK6>]; KENNETH OLMSTEAD & AARON SMITH, PEW RESEARCH CTR., AMERICANS AND CYBERSECURITY 1, 8–13 (Jan. 26, 2017), <https://www.pewresearch.org/internet/wp-content/uploads/sites/9/2017/01/Americans-and-Cyber-Security-final.pdf> [<https://perma.cc/2P3F-JP77>].

<sup>31</sup> Dan Conifer & Michael McKinnon, *Census Chiefs Unprepared for Website Crash, FOI Documents Show*, AUSTRALIAN BROADCASTING CORP. NEWS (Mar. 7, 2017), <https://www.abc.net.au/news/2017-03-08/census-chiefs-unprepared-for-website-crash-foi-documents-show/8333970> [<https://perma.cc/EA5U-ENNP>].

<sup>32</sup> Brown, *supra* note 8.

<sup>33</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 19.

<sup>34</sup> CTRS. FOR DISEASE CONTROL & PREVENTION, INTERIM US GUIDANCE FOR RISK

Bureau delayed and revised census operations that require in-person visits to households—and placed greater emphasis on the online response option.<sup>35</sup> Some of the affected census operations are designed to reach communities with limited access to a reliable broadband connection.<sup>36</sup> For example, the Non-Response Follow Up (NRFU) operation, which involves sending census workers door to door to collect responses from households that did not self-respond, has been delayed. The Update Enumerate operation involves sending census workers to remote areas of the country to enumerate people in person, and that operation has also been delayed.<sup>37</sup> These operations are essential to the success of the 2020 Census, and these delays mean that the Bureau must rely even more heavily on self-response.

As of May 15, 2020, 59.3% of all U.S. households have responded to the census, according to the Bureau's numbers that are reported live to the public.<sup>38</sup> Most households—about 80.9% of reported responses—have responded online.<sup>39</sup> These figures do not include individuals and families who live in certain group living arrangements (referred to as group quarters) and are counted through a separate operation.<sup>40</sup> In the 2010 Census, a final total of

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<sup>35</sup> Press Release, U.S. Census Bureau, Census Bureau Statement on Coronavirus and the 2020 Census (Mar. 11, 2020), <https://2020census.gov/en/news-events/press-releases/statement-coronavirus.html> [<https://perma.cc/3DER-YVU5>]

<sup>36</sup> CARA BRUMFIELD & SOPHIE KHAN, GEORGETOWN CTR. ON POVERTY & INEQUALITY: ECON. SEC. & OPPORTUNITY INITIATIVE, COUNTING RURAL AMERICA: A GUIDE TO 2020 CENSUS (October 10, 2018), <https://www.georgetownpoverty.org/wp-content/uploads/2018/10/GCPI-ESOI-Counting-Rural-America-20181010.pdf> [<https://perma.cc/F3DE-TKDU>].

<sup>37</sup> Fact Sheet, U.S. Census Bureau, 2020 Census Operational Adjustments Due to COVID-19 (Mar. 11, 2020), <https://www.census.gov/content/dam/Census/library/factsheets/2020/dec/2020-census-operational-adjustments-short-version.pdf> [<https://perma.cc/2PVV-YA7B>].

<sup>38</sup> *Response Rates Interactive Tool*, U.S. CENSUS 2020 (May 15, 2020), <https://2020census.gov/en/response-rates.html> [<https://perma.cc/L6KH-GCVU>].

<sup>39</sup> *Id.* (indicating the national Internet self-response was 48%; this is 80.9% of the national self-response rate of the 59.3% national response rate).

<sup>40</sup> *2020 Census Group Quarters Operation*, GEO. CTR. ON POVERTY & INEQ.: ECON. SECURITY & OPPORTUNITY INITIATIVE, <https://www.georgetownpoverty.org/issues/democracy/census/2020-census-group-quarters-operation/> [<https://perma.cc/DT39-8B23>].

66.5% of households<sup>41</sup> self-responded to the census—the Bureau expects around 60.5% of households to self-respond to the 2020 Census.<sup>42</sup>

### III. MODERN ANALYTICAL METHODS AND BIG DATA

Over the past decade, the barriers to using big data have significantly decreased with the advent of cloud computing and modern analytical methods. These advances have allowed the Bureau to explore new opportunities for improving the coverage, quality, and cost-effectiveness of the decennial census. Over the past two decades, the Census Bureau has employed a particular source of big data—federal and state administrative records.<sup>43</sup>

Administrative records refer to information collected by government agencies and commercial entities for the purposes of administering programs and providing services, such as tax and medical records.<sup>44</sup> Administrative records are distinct from data collected for statistical purposes through traditional surveys and programs such as the American Community Survey or the decennial census. For the 2020 Census, the Bureau will use administrative records to help determine the best times of the day to contact households, identify vacant housing units, and substitute missing data.<sup>45</sup> The Bureau will also employ federal and state administrative records to model and produce statistics on citizenship.<sup>46</sup>

While the COVID-19 pandemic has disrupted census operations,<sup>47</sup> administrative records, as with the online-response option, may be even more important.<sup>48</sup> However, key sources of administrative data have themselves

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<sup>41</sup> *Mapping "Self-Response" for a Fair and Accurate 2020 Census*, HTC 2020, <https://www.censushardtocommmaps2020.us/?latlng=40.00000%2C-98.09000&z=4&promotedfeaturetype=states&baselayerstate=3&rtrYear=sR2010&infotab=info-rtrselfresponse&filterQuery=false> [<https://perma.cc/ELV4-EQSM>].

<sup>42</sup> U.S. CENSUS BUREAU, 2020 CENSUS PREDICTIVE MODELS AND AUDIENCE SEGMENTATION REPORT VERSION 1.5 (Jun. 21, 2019), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/census-research/predictive-models-audience-segmentation-report.pdf> [<https://perma.cc/T3V2-LBPU>].

<sup>43</sup> AMERICAN COMMUNITY SURVEY OFFICE, U.S. CENSUS BUREAU, REALIZING THE PROMISE OF ADMINISTRATIVE DATA FOR ENHANCING THE AMERICAN COMMUNITY SURVEY (Nov. 2018), <https://www.census.gov/content/dam/Census/programs-surveys/acs/operations-and-administration/administrative-records-in-the-american-community-survey.pdf> [<https://perma.cc/3XML-9K42>].

<sup>44</sup> *Id.*

<sup>45</sup> U.S. CENSUS BUREAU, *supra* note 3.

<sup>46</sup> John M. Abowd, U.S. Census Bureau, *Census Bureau Citizenship Data Research and Product Development*, COUNCIL PROF. ASS'NS ON FED. STAT. (Sept. 6, 2019), <https://copafs.org/census-bureau-citizenship-data-research-and-product-development/> [<https://perma.cc/5T2F-HT9X>].

<sup>47</sup> Informational Release, U.S. Census Bureau, *supra* note 9.

<sup>48</sup> Kenneth Prewitt, *supra* note 11.

been impacted by the pandemic. For example, the Bureau relies on data from the Individual Tax Returns and Informational Returns provided by the Internal Revenue Service (IRS) to improve operations and to statistically estimate an individual's missing characteristics. However, the tax filing deadline has been delayed due to the pandemic.<sup>49</sup> While information from past filings are available to the Bureau, the Bureau may not receive complete data for the most recent fiscal year when it had planned to.

There are important limitations to the utility of administrative records, even in the best of times. For some variables, such as taxable income (which the decennial form does not ask about) or age, administrative records will likely be higher quality than self-reported data. However, for characteristics such as race (which the decennial does ask about), using administrative records may reflect the less reliable judgment of an observer rather than an individual's identity.<sup>50</sup>

Administrative records provide better information coverage for certain social and demographic groups over others. For example, it is likely that those who are disconnected from the labor force, people with minimal touch points with public and private record-keeping institutions, and noncitizens are among those who are less likely to be captured accurately, or at all, in these data sources.<sup>51</sup>

The growing abundance of personal information available online and from commercial providers, along with advances in computer science and statistical techniques, present an evolving threat to confidentiality: reconstruction and reidentification attacks.<sup>52</sup> As a steward of the public's information, the Bureau faces a fundamental challenge in making statistics available; the more statistics that are published, and the closer those statistics match the underlying, confidential data, the greater the probability that an

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<sup>49</sup> Laura Saunders, *When is Tax Day? Deadline to File Extended to July 15*, WALL ST. J. (Apr. 14, 2020 1:00 pm ET), <https://www.wsj.com/articles/new-details-from-the-irs-on-july-15-tax-deadline-11585087948> [<https://perma.cc/TZ9J-LA73>].

<sup>50</sup> See DAVE MCCLURE, ROBERT SANTOS & SHIVA KOORAGAYALA, URBAN INST., ADMINISTRATIVE RECORDS IN THE 2020 US CENSUS: CIVIL RIGHTS CONSIDERATIONS AND OPPORTUNITIES (May 2017), [https://www.urban.org/sites/default/files/publication/90446/census\\_ar\\_report.pdf](https://www.urban.org/sites/default/files/publication/90446/census_ar_report.pdf) [<https://perma.cc/S6ZS-KQM5>].

<sup>51</sup> See *id.*

<sup>52</sup> JAE JUNE LEE & CARA BRUMFIELD, GEORGETOWN CTR. ON POVERTY & INEQUALITY: ECON. SEC. & OPPORTUNITY INITIATIVE, FACT SHEET: DIFFERENTIAL PRIVACY IN THE 2020 CENSUS: NEW CONFIDENTIALITY & THE IMPLICATIONS FOR DATA USERS (Nov. 2019), <https://www.georgetownpoverty.org/wp-content/uploads/2019/11/GCPI-ESOI-Differential-Privacy-in-the-2020-Census-20191107.pdf> [<https://perma.cc/8254-ALK4>].

actor can reconstruct the underlying data and identify individual respondents.<sup>53</sup>

Reconstruction and reidentification attacks present real threats to the Bureau's legal obligation to keep respondents' information confidential.<sup>54</sup> In past decades, the Bureau has employed a collection of methods, including techniques such as swapping and cell suppression, to prevent the disclosure of confidential information.<sup>55</sup> However, Census Bureau researchers have shown that these approaches are no longer sufficient. Using publicly available statistics from the 2010 Census, Census Bureau researchers exactly reconstructed the individual records—i.e. the age, race, sex, and ethnicity of individual census respondents and the census block in which they lived—of 46% of the U.S. population (or about 142 million individuals).<sup>56</sup> In matching this reconstructed 2010 Census data with commercially available data, the Bureau accurately reidentified 17% of the public, or some 52 million people, by name.<sup>57</sup> Based on these findings, the Bureau concluded that disclosure avoidance methods used in past censuses will not be sufficient for the 2020 Census.<sup>58</sup> This is why, for the 2020 Census, the Bureau has turned to a new mathematical standard, called differential privacy, to provide robust and measurable guarantees of confidentiality in this age of big data.<sup>59</sup>

#### IV. MISINFORMATION AND DISINFORMATION IN THE NETWORKED ERA

To count everyone, every census relies on participation from the public as an important exercise of civic duty. High levels of public participation in the decennial census help the Bureau contain operational costs and improve

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<sup>53</sup> *Id.*

<sup>54</sup> See KELLY PERCIVAL, BRENNAN CTR. FOR JUSTICE, FEDERAL LAWS THAT PROTECT CENSUS CONFIDENTIALITY (Feb. 20, 2019),

[https://www.brennancenter.org/sites/default/files/2019-](https://www.brennancenter.org/sites/default/files/2019-08/Report_Federal_Laws_Census_Confidentiality.pdf)

[08/Report\\_Federal\\_Laws\\_Census\\_Confidentiality.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Federal_Laws_Census_Confidentiality.pdf) [<https://perma.cc/DC43-WHM2>].

<sup>55</sup> See JAE JUNE LEE & CARA BRUMFIELD, *supra* note 52.

<sup>56</sup> PowerPoint Presentation, Michael Hawes, Title 13, Differential Privacy, and the 2020 Decennial Census, Address before New Mexico State Data Centers (SDC) Affiliates Meeting and Workshop (Nov. 13, 2019), <https://www2.census.gov/about/policies/2019-11-paper-differential-privacy.pdf> [<https://perma.cc/9FMQ-Z9MT>].

<sup>57</sup> *Id.*

<sup>58</sup> See John M. Abowd, Chief Scientist and Assoc. Dir. for Research & Methodology, U.S. Census Bureau, Staring-Down the Database Reconstruction Theorem, Address before Joint Statistical Meetings, Vancouver, BC, Canada (Jul. 30, 2018), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2018/jsm/jsm-presentation-database-reconstruction.pdf> [<https://perma.cc/2LM8-9KUP>].

<sup>59</sup> See JAE JUNE LEE & CARA BRUMFIELD, *supra* note 52.

the quality of the statistics it publishes.<sup>60</sup> By seeking to dissuade communities from participating in the census, disinformation presents a significant threat. The proliferation and ubiquity of social media provides fertile ground for the spread of mis- and disinformation about the census.<sup>61</sup> Given the greater reliance on self-response due to the COVID-19 pandemic, the ability of the Census Bureau, community advocates, and tech and social media platforms to combat misinformation and disinformation will be even more important.

Community advocates, community-based organizations, and other GOTC organizations are working together to identify and respond to disinformation on social media.<sup>62</sup> As trusted messengers within the community, GOTC organizations are crucial to inoculating communities against mis- and disinformation by circulating accurate content about the census.<sup>63</sup>

GOTC organizations are working closely with the Census Bureau and information and communications technology companies. The Census Bureau has a “Trust & Safety” team to manage mis- and disinformation and a dedicated webpage and email address where the public can report any suspected misinformation and disinformation.<sup>64</sup> Social media and technology platforms did not have Terms of Services related to the census in the past, so GOTC organizations and the Census Bureau have been working with tech companies to get census-specific policies in place.<sup>65</sup> This includes companies such as Facebook, Google, YouTube, Nextdoor, and Pinterest. Some tech companies have since updated their policies regarding mis- and disinformation in advance of the census.<sup>66</sup> For example, Facebook has agreed to take down misleading and inaccurate advertisements, and the Census Bureau became the first government agency to access YouTube’s trusted flagger program,

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<sup>60</sup> U.S. CENSUS BUREAU, *Executive Summary, 2020 CENSUS LIFE-CYCLE COST ESTIMATE VERSION 2.0* (June 10, 2019), [https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/life-cycle-cost-estimate\\_v2.pdf](https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/life-cycle-cost-estimate_v2.pdf) [<https://perma.cc/X7J6-BMKT>].

<sup>61</sup> Andrew Perrin & Monica Anderson, *Share of U.S. Adults Using Social Media, Including Facebook, Is Mostly Unchanged Since 2018*, PEW RES. CTR. (April 10, 2019), <https://www.pewresearch.org/fact-tank/2019/04/10/share-of-u-s-adults-using-social-media-including-facebook-is-mostly-unchanged-since-2018/> [<https://perma.cc/MT9V-VN7Z>].

<sup>62</sup> See KYLA FULLENWIDER ET AL., NAT’L LEAGUE OF CITIES & BEECK CTR. FOR SOC. IMPACT + INNOVATION, *THE 2020 CENSUS: DIGITAL PREPAREDNESS PLAYBOOK* (2020), [https://beeckcenter.georgetown.edu/wp-content/uploads/2020/02/2020-Census-Digital-Preparedness-Playbook\\_final.pdf](https://beeckcenter.georgetown.edu/wp-content/uploads/2020/02/2020-Census-Digital-Preparedness-Playbook_final.pdf) [<https://perma.cc/4P2P-8PA6>].

<sup>63</sup> *See id.*

<sup>64</sup> Jarmin, *supra*, note 7.

<sup>65</sup> *U.S. Census Bureau Trust & Safety Team*, U.S. CENSUS BUREAU (Jan. 31, 2020), <https://www.census.gov/library/video/2020/us-census-bureau-trust-safety-team.html> [<https://perma.cc/5RZG-24BH>].

<sup>66</sup> *Id.*

allowing them to flag videos with malicious intent (and then YouTube decides whether it violates their policies).<sup>67</sup> The Bureau also has access to Twitter’s “partner portal.”<sup>68</sup>

## V. GETTING OUT THE COUNT

Amidst the challenges of counting in the digital age and falling trust in the federal government, community-based and national civil society organizations have an increasingly important role to play. These organizations have invested in outreach to groups the Bureau considers hard to count—and are helping fill gaps resulting from insufficient federal investment.

Groups have launched social media campaigns to target low income families and communities of color.<sup>69</sup> In particular, Asian Americans Advancing Justice, NALEO, and Color of Change are building positive awareness about the census and its importance, conducting public education and GOTC campaigns such as “Yalla Count Me In,” “Queer the Census,”<sup>70</sup> “Indian Country Counts,”<sup>71</sup> and “Hágase Contar.”<sup>72</sup> Groups are providing toolkits and workshops online for digital organizing that cover best practices and share resources among GOTC groups.<sup>73</sup> Some stakeholders, like State Voices and MoveOn, have been exploring better ways to use text messages to promote census awareness and participation.

Stakeholder groups are also working to expand access across the digital divide<sup>74</sup> and to leverage data and analytics to get out the count.<sup>75</sup> Public libraries and other community-based organizations were planning to set up kiosks and dedicated spaces for Internet access for the purpose of filling out the census form which will both help with awareness and improve access for people who do want to respond online but might not have the Internet at home<sup>76</sup>—though these have likely been impacted by the COVID-19 crisis. To

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> FULLENWIDER ET AL., *supra* note 62.

<sup>70</sup> *Queer the Census*, NAT’L LGBTQ TASK FORCE, <https://www.thetaskforce.org/queerthecensus.html> [<https://perma.cc/PBF6-RP4L>].

<sup>71</sup> *Indian Country Counts*, NAT’L CONG. OF AM. INDIANS, <http://www.ncai.org/initiatives/indian-country-counts> [<https://perma.cc/H225-25PF>].

<sup>72</sup> HÁGASE CONTAR, <https://hagasecontar.org/> [<https://perma.cc/UL8D-L3Q2>].

<sup>73</sup> *Digital Organizing Trends, Tips and Tools for GOTC Outreach*, *supra* note 22.

<sup>74</sup> FULLENWIDER ET AL., *supra* note 62.

<sup>75</sup> *2020 Census Operations Webinar Series*, CENSUS COUNTS 2020, <https://censuscounts.org/resources/webinars/> [<https://perma.cc/RUC8-T4R3>].

<sup>76</sup> AM. LIBRARIES ASS’N & GEORGETOWN CTR. ON POVERTY & INEQUALITY: ECON. SEC. & OPPORTUNITY INITIATIVE, *LIBRARIES’ GUIDE TO THE 2020 CENSUS* (Jan. 2020), <https://www.georgetownpoverty.org/wp-content/uploads/2020/02/Libraries-Guide-to-the-2020-Census-Jan-2020-update.pdf> [<https://perma.cc/VT3G-76GD>].

help community advocates and community-based organizations target their outreach efforts, the Center for Urban Research at CUNY Graduate Center, has developed a map of hard-to-count census tracts and will be monitoring and reporting on real-time response rates during the enumeration.<sup>77</sup>

The COVID-19 pandemic has interrupted outreach efforts by nonprofits, businesses, local governments and civic groups that the Census Bureau had planned to rely on to help boost census participation.<sup>78</sup> Campaigns like the Leadership Conference Education Fund's Census Counts campaign, for example, have needed to re-strategize, prioritizing paid media and potential partnerships with essential services.<sup>79</sup>

## VI. CONCLUSION

It is critical that we get the census right and ensure that all our communities are fairly and accurately counted. The rapidly growing availability of new data sources and digital technologies have presented new opportunities and challenges. This has forced the Bureau to continually adapt and change. In the strides the Bureau has taken in designing and implementing a census for the 21st century, the agency continues a long legacy of innovation. It is clear that technology and cutting-edge methodologies have an important role to play in the census—as they always have.

The same will be true moving into the 2030 census. It is impossible to fully anticipate what challenges and risks we will face, but the goal will remain the same—to ensure a fair and accurate count. As the 2020 Census continues to unfold, we will see how well we've managed to step up to the current challenges, and there will be lessons to carry forward. This exercise has already begun, as discussions about how to transform the Census Bureau into a true 21st century data agency—which will mean increasing reliance on new technologies and data sources—are already underway.

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<sup>77</sup> Steven Romalewski, *Part 5: Monitoring the Count in Real Time*, in 2020 CENSUS OPERATIONS (Census Counts Campaign & Funders Census Initiative, Sept. 18, 2019) <https://censuscounts.org/wp-content/uploads/2019/09/Operations-Part-5-Monitoring-the-Count-in-Real-Time-.pdf> [https://perma.cc/S4ZU-P8RW].

<sup>78</sup> Andrea Noble, *Coronavirus Outbreak Shifts Census Outreach Strategies*, ROUTE FIFTY (Apr. 1, 2020), <https://www.routefifty.com/health-human-services/2020/04/coronavirus-outbreak-shifts-census-outreach-strategies/164296/> [https://perma.cc/UCL6-FNZZ].

<sup>79</sup> *Id.*