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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

MAUREEN MURPHY,
individually and on behalf of a class of
similarly situated individuals;
JOHN HUDDLESTON,
individually and on behalf of a class of
similarly situated individuals,

Plaintiffs,

v.

GINA RAIMONDO,
in her official capacity as Secretary of
Commerce;
DEPARTMENT OF COMMERCE,
a federal agency;
ROBERT SANTOS,
in his official capacity as Director of the
Bureau of the Census;
BUREAU OF THE CENSUS,
a federal agency,

Defendants.

Civil Action

No. _____

COMPLAINT — CLASS ACTION

JURY TRIAL DEMANDED

1 **Introduction**

2 1. Each year census agents demand that millions of Americans answer detailed and
3 highly personal questions about their lives.

4 2. This is not the normal ten-year Census, which is relatively simple and designed to
5 count people for congressional districting. It is an unrelated survey called the American
6 Community Survey, which gathers information not necessary for the Census.

7 3. Unlike the decennial Census, the American Community Survey is conducted
8 every year and asks detailed and personal questions such as the person’s sexual orientation,
9 gender identity, fertility history, marital status, and divorce history. It asks about private health
10 information, including the effect of medical and psychological conditions on the individual’s daily
11 activities. It asks how much taxes and utility bills the household pays. It even asks how many beds,
12 cars, and washing machines the household has. The American Community Survey contains about
13 100 such questions.

14 4. Unlike the ten-year Census which everyone must answer, the Census Bureau
15 selects a sample of a few million households each year to answer the American Community
16 Survey. Individuals who refuse to answer this detailed questionnaire—which number in the
17 thousands—are subject to fines of up to \$5,000 per question.

18 5. Maureen Murphy and John Huddleston are two such individuals. They
19 understand the importance of the decennial Census. They have in the past and will continue in
20 the future to answer the ten-year Census. But they oppose the highly detailed and personal
21 information demanded in the American Community Survey and have refused to answer it. As a
22 result, they are subject to monetary fines for doing nothing more than keeping the private details
23 of their lives private.

24 6. The Census Bureau lacks the statutory and constitutional authority to force
24 individuals such as Ms. Murphy and Mr. Huddleston to answer the American Community
26 Survey’s detailed, intrusive questions.

1 **Plaintiffs**

2 7. Maureen Murphy is a United States citizen residing in the state of Washington
3 within the geographical boundaries of the United States District Court for the Western District
4 of Washington, and is over the age of 18.

5 8. John Huddleston is a United States citizen residing in the state of California within
6 the geographical boundaries of the United States District Court for the Eastern District of
7 California, and is over the age of 18.

8 **Defendants**

9 9. Gina Raimondo is the United States Secretary of Commerce, and she is sued in
10 her official capacity.

11 10. Robert Santos is the Director of the Bureau of the Census, and he is sued in his
12 official capacity.

13 11. The Department of Commerce is an agency of the United States.

14 12. The Bureau of the Census is an agency of the United States.

15 13. Each Defendant is charged with administering Title 13 of the United States Code
16 and conducting the American Community Survey. Each Defendant, acting in their respective
17 official capacities, has compelled Plaintiffs to answer the American Community Survey, told
18 Plaintiffs in writing that they are required by law to answer the survey, and threatened them with
19 monetary fines for refusing to answer it.

20 **Jurisdiction and Venue**

21 14. There is federal-question jurisdiction and a federal cause of action under 28 U.S.C.
22 §§ 1331 and 1343, and 5 U.S.C. §§ 702 and 703 because the Plaintiffs contend that the American
23 Community Survey violates relevant federal statutes along with the nondelegation doctrine and
24 Plaintiffs' fundamental rights to speech and privacy.

25 15. This Court has the power to grant declaratory and injunctive relief under 28
26 U.S.C. §§ 2201 and 2202, 5 U.S.C. §§ 702 and 706, and Federal Rules of Civil Procedure 57
27 and 65.

- 1 c. the house’s description, year built, move-in date, acreage of land, number of
2 rooms, and number of bedrooms. Exhibit 4 at 8.
- 3 d. whether the house has hot and cold running water, a bathtub or shower, a
4 sink with a faucet, a stove or range, a refrigerator, cellphones or landlines,
5 and a desktop, laptop, smartphones, or tablets. Exhibit 4 at 9.
- 6 e. whether the house has internet access, and whether the occupants access the
7 internet using cellular data plan, broadband, satellite, dial-up, or some other
8 service. Exhibit 4 at 9.
- 9 f. the number of cars the occupants have. Exhibit 4 at 9.
- 10 g. what fuel the house uses for heating, truthful dollar amounts for last month’s
11 electricity, gas, water and sewer, “oil, coal, kerosene, wood, etc.” bills, and
12 any monthly condominium fee. Exhibit 4 at 10.
- 13 h. whether the occupants receive food stamps or other nutrition assistance.
14 Exhibit 4 at 10.
- 15 i. whether the occupants own or rent the house and the dollar amount for the
16 monthly rent paid if the house is rented. Exhibit 4 at 10.
- 17 j. opinion as to the current sale price of the house. Exhibit 4 at 11.
- 18 k. actual dollar amounts for annual real estate taxes, fire, hazard, and flood
19 insurance, and monthly mortgage payments. Exhibit 4 at 11.
- 20 l. whether there is a second mortgage on the house and the dollar amount of
21 the monthly second-mortgage payments. Exhibit 4 at 11.
- 22 m. whether the occupants were born in the United States or elsewhere, whether
23 they are United States citizens, the year they came to live in the United
24 States, the highest level of education completed, and a description of their
24 bachelor’s degree major. Exhibit 4 at 12–13.
- 26 n. how many and which languages they speak, and the previous full address
27 where the occupants lived. Exhibit 4 at 13.
- 28

- 1 o. whether the occupants have health insurance through their current or former
2 employer, or whether it is purchased directly from an insurance company,
3 Medicare, Medicaid, TRICARE, VA, Indian Health Service, or any other
4 type of health insurance coverage. Exhibit 4 at 13.
- 5 p. whether there is a premium for the health insurance plan (which “does not
6 include copays, deductibles, or other expenses such as prescription costs”),
7 and whether the occupants receive a tax credit or subsidy based on family
8 income. Exhibit 4 at 14.
- 9 q. details of the occupants’ physical, mental, or emotional conditions such as
10 deafness or blindness, and any difficulty concentrating, remembering,
11 making decisions, walking or climbing, dressing or bathing, or running
12 errands. Exhibit 4 at 14.
- 13 r. marital status, whether the occupants have been married, widowed, or
14 divorced, how many times they have been married, and the year of their last
15 marriage. Exhibit 4 at 14.
- 16 s. fertility status and whether the occupants have had children in the past year,
17 have minor grandchildren, or provide for the grandchildren’s basic needs,
18 and how long they have been providing for them. Exhibit 4 at 15.
- 19 t. whether the occupants have served in the military, served in the military
20 during specific periods, and their VA service-connected disability rating
21 (given in percentages). Exhibit 4 at 15.
- 22 u. whether the occupants worked at a job the previous week, the employer’s full
23 address, the occupants’ method of commuting to work, whether they
24 carpool, the hour and minute of starting commute, the commute time in
24 minutes, and whether they have been laid off, temporarily absent from work,
25 or furloughed. Exhibit 4 at 16.
- 26 v. whether the occupants have been actively looking for work the previous
27 week, the respondent’s opinion on whether the occupants could have started
28

1 a new job if offered, the number of weeks they worked during the previous
2 year, and the number of hours worked each week during the previous year.

3 Exhibit 4 at 17.

4 w. the name of the respondent's employer, a description of the employer's
5 business or industry, the respondent's primary occupation, and a detailed job
6 profile. Exhibit 4 at 17-18.

7 x. the dollar amounts for total annual income for each of the following
8 categories:

9 i. salary, commission, bonus, or tips,

10 ii. self-employment income,

11 iii. income earned from interest, dividends, rental, royalty, and estates
12 and trusts,

13 iv. Social Security or railroad retirement income,

14 v. Supplemental Social Security Income,

15 vi. pensions, other retirement income, and any survivor or disability
16 income, and

17 vii. any other income, including VA payments, unemployment
18 compensation, child support, or alimony. Exhibit 4 at 18.

19 23. Maureen Murphy and John Huddleston each have refused to answer the American
20 Community Survey (Exhibit 4).

21 24. Maureen Murphy and John Huddleston each will continue to refuse to answer the
22 American Community Survey. Maureen Murphy and John Huddleston will not answer these or
23 any other questions on the American Community Survey, now or in the future.

24 25. Maureen Murphy and John Huddleston each have in the past answered and will
24 continue in the future to answer the actual Census that occurs once every ten years. Maureen
26 Murphy and John Huddleston have answered the 2020 decennial Census questionnaire, attached
27 as Exhibit 7. The Census asks for (1) the number of people living in the dwelling, (2) whether the
28 dwelling is owned, rented, or occupied without paying rent, (3) the respondent's phone number,

1 (4) the respondent's name, sex, age, Hispanic/Latino/Spanish origin, and race, and (5) each
2 occupants' relationship to the respondent, sex, age, Hispanic/Latino/Spanish origin, and race.

3 26. Defendants have stated on their:

- 4 a. website (<https://perma.cc/RWG3-TR77>),
5 b. in FAQ-style brochures (Exhibit 3), and
6 c. in guidance documents (Exhibit 6; TAM CC-TAM-PMTA-00063 (IRS
7 TASM), 1995 WL 17844611),

8 that answering the American Community Survey is mandated by law and refusal to answer carries
9 criminal fines of up to \$5,000.

10 **Statutory Background**

11 27. The American Community Survey is different from the decennial or ten-year
12 Census. The decennial Census is authorized by the Constitution's Enumeration Clause, which
13 requires an "actual Enumeration" of persons in the United States every ten years in order to
14 properly apportion congressional seats among the several states. U.S. Const. art. I, § 2, cl. 3. In
15 other words, to comply with the Constitution, the Census Bureau must count the actual number
16 of persons in the United States. Accordingly, sampling, which is a method for estimating the
17 number of people in a particular category by questioning only a subset of them, is forbidden for
18 use in place of an actual enumeration in the decennial Census. *Department of Commerce v. United*
19 *States House of Representatives*, 525 U.S. 316, 343 (1999). Sampling can be used to supplement or
20 check for errors in the actual enumeration required by the Constitution, but such surveys must be
21 necessary for enumeration.

22 28. In contrast to the decennial Census, the American Community Survey is
23 exclusively a sampling survey (Exhibit 3, Exhibit 6). The American Community Survey is not part
24 of or related to the Census in any way. Instead, its purpose is to provide "demographic, social,
24 economic, and housing estimates" "needed to assess a variety of programs," Exhibit 3, so that
26 government entities, nongovernmental organizations, and businesses can "distribute resources,"
27 Exhibit 5 at 2.

1 29. As authority to conduct the American Community Survey, Defendants rely on
2 three statutes: 13 U.S.C. §§ 141, 193, 221.

3 a. Section 141 allows Defendants to “take a decennial census of population,”
4 and “[i]n connection with any such census,” “authorize[s]” Defendants “to
5 obtain such other census information as necessary.”

6 b. Section 193 gives Defendants the authority to “make surveys and collect
7 such preliminary and supplementary statistics related to the main topic of the
8 census as are necessary to the initiation, taking, or completion thereof.”

9 c. Section 221 states that if someone “refuses or willfully neglects” “to
10 answer” “any census or survey,” then that person “shall be fined not more
11 than \$100.”

12 30. Defendants claim that they have statutory authority to compel Plaintiffs to answer
13 the American Community Survey. But the statutory authorization to “collec[t]” information
14 does not give Defendants the power to compel the production of information from Plaintiffs,
15 especially since the information Defendants demand through the American Community Survey
16 is not necessary for the ten-year Census.

17 31. The two statutes, 13 U.S.C. §§ 141, 193, at most give the Defendants the authority
18 to conduct a post-census statistical adjustment to ensure the accuracy of the decennial Census.
19 They do not give the Defendants the limitless power to compel Plaintiffs to produce personal
20 information or opinions to Defendants.

21 32. If Sections 141 and 193 are read to authorize the American Community Survey,
22 there is no limiting principle as to what “information” the Defendants can compel Plaintiffs to
23 provide “annually or less frequently” through “surveys” such as the American Community
24 Survey.

24 33. Defendants claim that those refusing to answer the American Community Survey
26 may be found guilty of a criminal infraction and be required to pay a monetary fine.

27 34. Defendants rely on 13 U.S.C. § 221 to inform the Plaintiffs that their “refus[al] ...
28 to answer ... any of the questions on” the American Community Survey is subject to a “fin[e of]

1 not more than \$100.” But nothing in 13 U.S.C. § 221 states that the fine for refusal to answer the
2 questions appearing in the American Community Survey is a *criminal* offense. The penalty
3 provision, 13 U.S.C. § 221, does not give Defendants the authority to define refusal to answer the
4 American Community Survey as a criminal offense.

5 35. Defendants rely on the criminal statutes, 18 U.S.C. §§ 3559, 3571 (Exhibit 3,
6 Exhibit 6), to assert that the fine imposed by 13 U.S.C. § 221 is a criminal fine and to unilaterally
7 increase the fine fifty-fold to \$5,000 from \$100. *See* Exhibit 3 at 2. Worse still, this change is
8 announced in an FAQ-style guidance document (Exhibit 3), not through any rulemaking
9 procedure. Defendants are using and have used this threat of fines to compel individuals like
10 Plaintiffs to disclose their private information and opinions to them.

11 36. Nothing in 13 U.S.C. §§ 141, 193, 221 and 18 U.S.C. §§ 3559, 3571 grants
12 Defendants the authority to redefine the refusal-to-answer statutory violation as a crime and
13 enhance the penalty fifty-fold. Nothing in these statutes gives Defendants the authority to compel
14 Plaintiffs to divulge the information the American Community Survey demands. Nothing in these
15 statutes gives Defendants the authority to compel Plaintiffs to speak when Plaintiffs invoke their
16 First Amendment right to refrain from speaking by refusing to answer the American Community
17 Survey. Nothing in these statutes gives Defendants the authority to invade Plaintiffs’ fundamental
18 right of privacy by compelling Plaintiffs to divulge Plaintiffs’ personal information to Defendants.
19 **Plaintiffs Are Harmed by Defendants and Those Injuries Are Redressable in Federal Court**

20 37. Defendants have compelled, are compelling, and will continue to compel Maureen
21 Murphy and John Huddleston to answer the American Community Survey under the threat of
22 imposing monetary fines.

23 38. Defendants have harmed Plaintiffs because they are being compelled to disclose
24 personal information that the Defendants have no authority to compel.

24 39. Defendants have also harmed Plaintiffs by intruding upon their privacy and
26 compelling them to speak. Defendants’ written threat of prosecution is sufficient to deter a person
27 of ordinary firmness such as Maureen Murphy and John Huddleston from exercising their
28 constitutional rights to privacy and silence.

1 40. Defendants' actions have injured Maureen Murphy and John Huddleston because
2 they are now forced to choose between paying a fine for exercising their rights or giving up their
3 rights.

4 41. Defendants' actions have caused and will cause Maureen Murphy and John
5 Huddleston to spend time, effort, and money to review instructions, search personal records,
6 collect relevant information, and prepare to transmit or otherwise disclose information to
7 Defendants in the event they have to answer the American Community Survey. Defendants have
8 imposed costly, self-executing compliance burdens on Plaintiffs.

9 42. Each American Community Survey question Defendants have asked Maureen
10 Murphy and John Huddleston to answer causes a separate injury. Each question they refuse to
11 answer makes them potentially liable for up to \$5,000 in criminal fines. *National Urban League v.*
12 *Ross*, 489 F. Supp. 3d 939, 975 (N.D. Cal. 2020) (stating that "each unanswered question risks an
13 additional fine" under 13 U.S.C. § 221) (simplified); *see* Exhibit 3 at 2.

14 **Declaratory Relief**

15 43. There is an actual and substantial controversy between the Plaintiffs and
16 Defendants over the latter's failure to comply with the operative statutes. Defendants have
17 determined that Plaintiffs must answer the American Community Survey or else pay monetary
18 fines.

19 44. This controversy is currently justiciable because Defendants' failure to comply
20 with the operative statutes has caused and will continue to cause Plaintiffs immediate and concrete
21 injury. The Plaintiffs are currently and continuously injured by Defendants' letters (Exhibit 1,
22 Exhibit 2, Exhibit 8) because their issuance and the threat of enforcement the letters contain will
23 continue to force Plaintiffs to alter their ordinary course of conduct and behavior (including
24 records retention practices, setting aside a sum of money to cover the risk of fines, spending
24 money to collect records necessary to answer the survey questions truthfully), and subject them
26 to fines if they do not comply with Defendants' demand for production of private information and
27 opinions. Plaintiffs have already suffered specific injuries because of Defendants' letters and the
28 threat of enforcement contained therein, which injuries will continue.

1 45. Absent a declaration that refusal to answer the American Community Survey leads
2 to no adverse legal consequences flowing to the Plaintiffs, the risk of monetary penalties payable
3 by Plaintiffs will continue to persist. Plaintiffs’ rights and legal obligations will remain uncertain
4 absent declaratory relief. Defendants’ conduct and the letters Defendants sent Plaintiffs each
5 create an actual controversy between Plaintiffs and Defendants as to the rights, status, and
6 consequences of actions either would take now and in the future.

7 46. Declaratory relief is, therefore, appropriate to resolve this controversy.

8 **Injunctive Relief**

9 47. If an injunction does not issue enjoining Defendants from compelling Plaintiffs to
10 answer the American Community Survey, the Plaintiffs would be irreparably harmed. Plaintiffs
11 are currently and continuously injured by the issuance of the Defendants’ letters (Exhibit 1,
12 Exhibit 2, Exhibit 8) compelling Plaintiffs’ compliance.

13 48. Plaintiffs have no plain, speedy, and adequate remedy other than declaratory and
14 injunctive relief.

15 49. If not enjoined, Defendants will continue to enforce, threaten to enforce, and
16 continue to compel Plaintiffs to produce information and opinions by answering the American
17 Community Survey, all in derogation of Plaintiffs’ rights.

18 50. Accordingly, injunctive relief is appropriate.

19 **Class Action Allegations**

20 51. Each named Plaintiff sues individually and as a class representative under Federal
21 Rules of Civil Procedure 23(a) and 23(b)(2) on behalf of all persons who refuse to answer the
22 American Community Survey.

23 52. The class includes all persons whom Defendants require to answer the American
24 Community Survey but who have or will refuse to answer it. Defendants injure all class members
24 to the same extent that the named Plaintiffs are injured.

26 53. Named Plaintiffs are adequate class representatives because they belong to the
27 class of persons who have refused to answer or will refuse to answer the American Community
28 Survey.

1 54. According to Defendants' data, the class includes thousands of individuals across
2 the country. *See* <https://perma.cc/RWG3-TR77>. The class, therefore, meets the numerosity
3 requirement.

4 55. The class is so numerous that the joinder of all members is impractical. Only an
5 injunctive class as defined can shut down Defendants' unlawful compulsion, confine Defendants'
6 actions within the limits of operative statutes, avoid casting doubt on the constitutionality of the
7 operative statutes, and vindicate the constitutional rights of the members of the class.

8 56. There are common questions of law and fact that unite the class, including:

- 9 a. Whether the Defendants have the statutory authority to compel individuals to
10 divulge information that the American Community Survey demands;
- 11 b. Whether there is a violation of the nondelegation doctrine if the statutes were
12 read to delegate to the Defendants the authority (i) to compel the production
13 of information, and (ii) to disregard the class members' individual and
14 fundamental rights to speech and privacy;
- 15 c. Whether there is a violation of the nondelegation doctrine when the
16 Defendants redefine a statutory violation as a crime, enhance the penalty, and
17 then threaten class members with such fines when they refuse to answer the
18 American Community Survey;
- 19 d. Whether Defendants violate class members' First Amendment rights;
- 20 e. Whether Defendants violate class members' fundamental right to privacy.

21 57. The claims brought by the named Plaintiffs are typical of the class, and the named
22 Plaintiffs will fairly and adequately protect the interests of the class.

23 58. The relief sought is appropriate for the class as a whole because Plaintiffs demand
24 declaratory and injunctive relief against Defendants prohibiting Defendants from compelling
24 Plaintiffs and class members to answer the American Community Survey or risk monetary fines
26 for refusing to answer. This relief equally impacts the entire class.

27

28

1 **Claims for Relief**

2 **Count 1:**

3 **Defendants' Actions (Compulsion) Are *Ultra Vires* and Beyond Their Statutory Authority**

4 59. Plaintiffs incorporate by reference all of the preceding paragraphs as though fully
5 set forth here.

6 60. Defendants have the authority to conduct the ten-year Census and minor statistical
7 adjustments to ensure the accuracy of the Census. But the American Community Survey is
8 neither the Census nor a statistical adjustment to the Census.

9 61. Defendants and their officers or employees acted against Plaintiffs in their official
10 capacity under the color of federal statutes, 13 U.S.C. §§ 141, 193, 221, and 18 U.S.C. §§ 3559,
11 3571.

12 62. These provisions only allow Defendants to conduct a survey. They do not allow
13 Defendants to compel individuals to answer such surveys.

14 63. But Defendants have directed and compelled Plaintiffs and others to answer the
15 American Community Survey under threat of thousands of dollars in fines for each unanswered
16 question.

17 64. Agencies have no inherent power to make law. Like all federal agencies,
18 Defendants get their authority to act from Congress. Defendants have no power to act unless and
19 until Congress confers power upon them. *Louisiana Public Service Commission v. FCC*, 476 U.S.
20 355, 374 (1986). Actions taken without statutory authority are *ultra vires*.

21 65. Defendants' interpretation of the relevant statutes and the actions Defendants
22 took against Plaintiffs in pursuance thereof are arbitrary, capricious, an abuse of discretion, and
23 otherwise not in accordance with law. Defendants' interpretation and actions taken thereunder
24 are contrary to constitutional right, power, privilege, or immunity, in excess of statutory
24 jurisdiction, authority, or limitations, or short of a statutory right.

26 66. Plaintiffs therefore demand declaratory and injunctive relief, including an order
27 enjoining Defendants now and in the future from compelling Plaintiffs to answer the American
28

1 Community Survey, imposing any monetary fine on Plaintiffs for refusing to answer the survey,
2 or otherwise taking any legal action against Plaintiffs for refusing to answer the survey.

3 **Count 2:**

4 **Defendants' Actions (Penalty) Are *Ultra Vires* and Beyond Their Statutory Authority**

5 67. Plaintiffs incorporate by reference all of the preceding paragraphs as though fully
6 set forth here.

7 68. Defendants and their officers or employees acted against Plaintiffs in their official
8 capacity under the color of federal statutes, 13 U.S.C. §§ 141, 193, 221, and 18 U.S.C. §§ 3559,
9 3571.

10 69. These statutes do not authorize Defendants to redefine the refusal-to-answer
11 violation as a crime and impose a penalty enhancement by amending the \$100 fine to a \$5,000
12 fine. Actions taken without statutory authority are *ultra vires*.

13 70. Criminalizing a statutory fine is permissible only if the statute itself explicitly so
14 provides. *United States v. Alghazouli*, 517 F.3d 1179, 1184 (9th Cir. 2008). The statute, 13 U.S.C.
15 § 221, does not provide so here because Congress specifically *decriminalized* it. *See* 90 Stat. 2465
16 (1976).

17 71. The crime-classifying statute, which classifies a pre-existing crime for which “no
18 imprisonment is authorized, as an infraction” and sets the fine of “not more than \$5,000” “for
19 an infraction,” does not suspend, supersede, or otherwise amend 13 U.S.C. § 221(a), and is not
20 otherwise applicable. 18 U.S.C. §§ 3559(a)(9), 3571(b)(7).

21 72. Defendants have threatened Plaintiffs with fines of up to \$5,000 for refusing to
22 answer the American Community Survey.

23 73. Defendants' interpretation of the relevant statutes and the actions Defendants
24 took against Plaintiffs in pursuance thereof are arbitrary, capricious, an abuse of discretion, and
24 otherwise not in accordance with law. Defendants' interpretation and actions taken thereunder
26 are contrary to constitutional right, power, privilege, or immunity, in excess of statutory
27 jurisdiction, authority, or limitations, or short of a statutory right.

74. Plaintiffs therefore demand declaratory and injunctive relief, including an order enjoining Defendants now and in the future from compelling Plaintiffs to answer the American Community Survey, imposing any monetary fine on Plaintiffs for refusing to answer the survey, or otherwise taking any legal action against Plaintiffs for refusing to answer the survey.

Count 3:

**13 U.S.C. §§ 141, 193, 221 Violate the Article I, § 1
Vesting Clause and the Nondelegation Doctrine**

75. Plaintiffs incorporate by reference all of the preceding paragraphs as though fully set forth here.

76. Article I, § 1 of the United States Constitution (emphasis added), states: “*All* legislative Powers herein granted shall be vested in a Congress of the United States.” (“Vesting Clause”).

77. The Supreme Court has interpreted the Vesting Clause to mean that any delegation of authority to an agency must have an intelligible principle.

78. If the relevant statutes are read to grant Defendants the authority to compel answers to the American Community Survey, then it is an open-ended grant of authority with no intelligible principle.

79. The relevant statutes, 13 U.S.C. §§ 141, 193, 221, and 18 U.S.C. §§ 3559, 3571, provide no limiting or intelligible principle to which Defendants are directed to conform when carrying out their functions. *Mistretta v. United States*, 488 U.S. 361, 372 (1989). The statutes fail to provide a guiding principle and instead delegate to the agency authority to compel Plaintiffs to provide any information Defendants demand from them. As a result, the statutes are invalid because they violate the Vesting Clause. *Id.*

80. Alternatively, if 13 U.S.C. §§ 141, 193, 221 supply a sufficient intelligible principle, then the doctrine must be reexamined to adhere to the proper limits in the Vesting Clause of Article I, § 1.

81. Any delegation is also invalid because delegation to agencies is valid only if private rights are protected. *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946). Here,

1 Defendants' interpretation and implementation of the statutes violates Plaintiffs' rights to privacy
2 and to silence.

3 82. Defendants' interpretation of the relevant statutes and the actions Defendants
4 took against Plaintiffs in pursuance thereof are arbitrary, capricious, an abuse of discretion, and
5 otherwise not in accordance with law. Defendants' interpretation and actions taken thereunder
6 are contrary to constitutional right, power, privilege, or immunity, in excess of statutory
7 jurisdiction, authority, or limitations, or short of a statutory right.

8 83. Plaintiffs therefore demand declaratory and injunctive relief, including an order
9 enjoining Defendants now and in the future from compelling Plaintiffs to answer the American
10 Community Survey, imposing any monetary fine on Plaintiffs for refusing to answer the survey,
11 or otherwise taking any legal action against Plaintiffs for refusing to answer the survey.

12 **Count 4:**

13 **13 U.S.C. § 221, and 18 U.S.C. §§ 3559, 3571**

14 **Violate the Article I, § 1 Vesting Clause and the Nondelegation Doctrine**

15 84. Plaintiffs incorporate by reference all of the preceding paragraphs as though fully
16 set forth here.

17 85. Article I, § 1 of the United States Constitution (emphasis added), states: "*All*
18 legislative Powers herein granted shall be vested in a Congress of the United States." ("Vesting
19 Clause").

20 86. Defendants cannot criminalize conduct on their own initiative. Congress must be
21 precise when it authorizes criminal sanctions, consistent with the rule of lenity.

22 87. If the statutes (13 U.S.C. § 221, and 18 U.S.C. §§ 3559, 3571) are read broadly to
23 give Defendants the power to criminalize the refusal-to-answer violation and enhance the criminal
24 penalty, then the statutes delegate authority in violation of the Vesting Clause.

24 88. Plaintiffs' refusal to divulge personal information to Defendants and choose to stay
26 silent is *not* criminal behavior. It is the exercise of one's constitutional right to privacy and the
27 right not to be compelled to speak. It violates the nondelegation doctrine if Defendants can
28 criminalize any behavior and enhance the applicable penalty.

1 104. The right to privacy is the right of the individual to be free from unwarranted
2 governmental intrusion. *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972). Government action
3 limiting, invading, or abridging the right to privacy must be justified by a compelling state interest.
4 The legislative enactments must be narrowly drawn to express only legitimate state interests.

5 105. Plaintiffs' personal information is private, so Defendants cannot compel Plaintiffs
6 to divulge that information to Defendants and thereby invade their privacy without satisfying
7 strict scrutiny. Plaintiffs want to keep their personal information private and not turn it over to
8 Defendants.

9 106. Defendants' actions compelling Plaintiffs to answer the American Community
10 Survey do not satisfy any level of scrutiny.

11 107. The American Community Survey violates Plaintiffs' Fourth Amendment right to
12 privacy because Defendants compel Plaintiffs to divulge information that would otherwise not be
13 available to Defendants without trespassing upon and searching Plaintiffs' homes, papers, and
14 effects. Defendants obtain Plaintiffs' intimate details by means of a compulsory questionnaire in
15 the absence of probable cause, a warrant, or an exception to the Fourth Amendment. Defendants
16 force Plaintiffs to conduct a search upon their own papers and effects, question other occupants
17 of their home, and turn over the gathered information to Defendants.

18 108. Plaintiffs have refused and will continue to refuse to answer the American
19 Community Survey. They have not and will not voluntarily turn over information about
20 themselves or their household to Defendants beyond what is required for actual enumeration once
21 every ten years.

22 109. The relevant statutes, 13 U.S.C. §§ 141, 193, 221, and 18 U.S.C. §§ 3559, 3571, and
23 Defendants' actions taken thereunder, unconstitutionally invade Plaintiffs' privacy.

24 110. Defendants lack authority to compel Plaintiffs to answer the American
24 Community Survey because 13 U.S.C. §§ 141, 193, 221, and 18 U.S.C. §§ 3559, 3571, are
26 unconstitutional as applied.

27 111. Defendants' interpretation of the relevant statutes and the actions Defendants
28 took against Plaintiffs in pursuance thereof are arbitrary, capricious, an abuse of discretion, and

1 otherwise not in accordance with law. Defendants' interpretation and actions taken thereunder
2 are contrary to constitutional right, power, privilege, or immunity, in excess of statutory
3 jurisdiction, authority, or limitations, or short of a statutory right.

4 112. Plaintiffs therefore demand declaratory and injunctive relief, including an order
5 enjoining Defendants now and in the future from compelling Plaintiffs to answer the American
6 Community Survey, imposing any monetary fine on Plaintiffs for refusing to answer the survey,
7 or otherwise taking any legal action against Plaintiffs for refusing to answer the survey.

8 **Jury Trial Demanded**

9 113. Plaintiffs demand a trial by jury for all issues so triable.

10 **Request for Relief**

11 For all of the reasons stated above, Plaintiffs request relief as follows:

12 A. Certify the class as defined.

13 B. Declare that the Plaintiffs are not subject to fines or otherwise under any
14 compulsion to answer the American Community Survey; that no adverse legal consequences will
15 flow from their decision not to answer the American Community Survey.

16 C. Declare the meaning of operative statutes, 13 U.S.C. §§ 141, 193, 221, and 18
17 U.S.C. §§ 3559, 3571, as not granting Defendants the authority (i) to compel Plaintiffs to produce
18 information that the American Community Survey demands; (ii) to redefine a statutory violation
19 as a crime, enhance the statutory penalty from \$100 to \$5,000, and then threaten individuals with
20 monetary fines when they refuse to answer the American Community Survey; and/or (iii) to
21 disregard Plaintiffs' constitutional rights to speech and privacy.

22 D. Enjoin Defendants now and in the future from requiring Plaintiffs to answer the
23 American Community Survey.

24 E. Enjoin Defendants now and in the future from imposing any monetary fine on
24 Plaintiffs for refusing to answer the American Community Survey.

26 F. Enjoin Defendants now and in the future from otherwise taking any adverse action
27 against Plaintiffs for refusing to answer the American Community Survey.

28 G. Award attorneys' fees, expenses, and costs.

1 H. Award such other relief as the Court deems just and proper.

2 DATED: May 24, 2022.

3 Respectfully submitted:

4
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18 *Attorneys for Plaintiffs*