UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

State of Missouri, David Mason, Andrea McCann, Jessica Fisher, and Phillip Fisher, *Plaintiffs*, v. United States Department of Commerce, Howard W. Lutnick in his official capacity as Secretary of Commerce, United States Census Bureau, George Cook in his official capacity as Acting Director of the U.S. Census Bureau, *Defendants*, and Labor Council for Latin American Advancement, Juan Vazquez, Joey Cardenas, and Alejandra Ramirez-Zarate, *Proposed Defendant-Intervenors.*	Case No.: 4:26-cv-00131

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE BY PROPOSED DEFENDANT-INTERVENORS LCLAA, JUAN VAZQUEZ, JOEY CARDENAS, AND ALEJANDRA RAMIREZ-ZARATE

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I. INTRODUCTION

Plaintiffs seek a court order vacating and setting aside the Final 2020 Census Residence Criteria and Residence Situations ("2020 Census Residence Criteria") to exclude undocumented immigrants and temporary visa holders from the total population count used for apportionment. Plaintiffs further seek to exclude undocumented immigrants and temporary visa holders from the 2030 census apportionment base.

Proposed Defendant-Intervenors Labor Council for Latin American Advancement ("LCLAA") is a leading national organization focused on organizing and mobilizing Latinos in the labor movement and bolstering civic engagement in the Latino community. Individual Proposed Defendant-Intervenors live in California, Illinois, or Texas and have a direct interest in ensuring that they receive adequate and fair representation in the U.S. House of Representatives and the Electoral College because they live in states with large populations, including large populations of Latinos, non-U.S. citizens, and undocumented immigrants.

Defendants cannot adequately represent Proposed Defendant-Intervenors' interests. The Trump Administration previously took concrete steps to gather immigration data for the purpose of removing undocumented immigrants from the total population count used for apportionment.[1] Additionally, Defendants are responsible for representing a broad range of public interests and are not subject to the consequences of excluding undocumented immigrants and nonimmigrants from the population count for congressional apportionment and electoral college votes.

[1] Exec. Order No. 13880, 84 Fed. Reg. 33821 (July 11, 2019), https://www.govinfo.gov/content/pkg/FR-2019-07-16/pdf/2019-15222.pdf; Memorandum on Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census, 85 Fed. Reg. 44679 (July 21, 2020), https://www.govinfo.gov/content/pkg/FR-2020-07-23/pdf/2020-16216.pdf

Proposed Defendant-Intervenors seek intervention as a matter of right under Federal Rule of Civil Procedure 24(a). In the alternative, Proposed Defendant-Intervenors respectfully request permissive intervention under Fed. R. Civ. P. 24(b), as their claims and defenses share common questions of law and fact with the main action, and their intervention will contribute to a just and equitable resolution of the important issues at stake. Granting intervention will allow Proposed Defendant-Intervenors to offer evidence and arguments assisting the Court in its decisions, and ensure that Proposed Defendant-Intervenors' direct and immediate interests are protected. Proposed Defendant-Intervenors respectfully request that the Court grant their motion to intervene.

II. FACTUAL BACKGROUND

a. 2020 Census Residence Criteria

Every decade the Census Bureau reviews the Residence Criteria to "ensure that the concept of usual residence is interpreted and applied, consistent with the intent of the Census Act of 1790." Final 2020 Residence Criteria and Residence Situations, 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018) ("2020 Census Residence Criteria"). The 2020 Census Residence Criteria states that foreign citizens living in the U.S. will be "[c]ounted at the U.S. residence where they live and sleep most of the time." *Id.* at 5533. Members of the diplomatic community and persons who are visiting the U.S. from other countries are not counted in the Census. *Id.* In its response to comments on the draft 2020 Census Residence Criteria, the Census Bureau stated that it considered "foreign citizens" to be "living" in the U.S. if "at the time of the census, they are living and sleeping most of the time at a residence in the U.S." *Id.* at 5530. The 2020 Census Residence Criteria treats all immigrants who are living in the U.S. the same. *Id.*

The Census Bureau's inclusion of all immigrants residing in the U.S. complies with the Enumeration Clause of the U.S. Constitution, which directs Congress to ensure that an "actual

Enumeration" of the U.S. population is conducted by counting the "whole Number of Persons" in each state. U.S. Const. art. I, § 2, cl. 3; *id.* amend. XIV, § 2. The U.S. Constitution further mandates that apportionment of congressional districts be conducted on the basis of total population. *Id.* art. I, § 2, cl. 3. ("Representatives shall be apportioned among the several States, according to their respective numbers, counting the whole Number of Persons in each State."). Within one week of the opening of the next session of Congress in the year following a Census count, the President must transmit to Congress a statement showing the "whole number of persons in each State . . . and the number of Representatives to which each State would be entitled." 2 U.S.C. § 2a.

The "method of equal proportions" allocates 435 seats to the U.S. House of Representatives based on each state's total population. *Id.* One seat is automatically awarded to each state, and the remaining 385 seats are allocated through an equation that takes into account the total apportionment population of each state. *See* Kristin D. Burnett, Congressional Apportionment, 2010 Census Briefs, United States Census Bureau, Nov. 2011, at 6, *available at* https://www.census.gov/content/dam/Census/library/publications/2011/dec/c2010br-08.pdf. The average size of a congressional seat in 2010 was 710,767. *Id.* at 1. However, because each state is constitutionally guaranteed at least one congressional district, and each state's total population does not neatly fit into multiples of that average size, the allocation equation results in congressional districts that vary from the ideal average.

b. This Action

Plaintiffs filed this lawsuit on January 30, 2026 to challenge the Census Bureau's adoption of the 2020 Census Residence Criteria. Plaintiffs claim that prior use of the total population base redistributed congressional seats and electoral college votes away from states with low numbers of undocumented immigrants to states with high numbers of undocumented immigrants, as well

as deprived Plaintiffs of federal funding. Plaintiffs further allege that the inclusion of undocumented immigrants and nonimmigrants in the decennial census total population count violates the right to equal representation and does not comport with the Constitution. Plaintiffs further allege that the use of total population data in 2030 will result in a similar loss of congressional seats, electoral college votes, and federal funding by Plaintiffs. Defendants have not yet implemented any new Residence Criteria in preparation for the 2030 Census.

c. Proposed Defendant-Intervenors

Proposed Defendant-Intervenors live in or serve individuals in states with high Latino populations, high non-U.S.-citizen populations, and high undocumented populations. If the 2020 Census Residence Criteria is enjoined, and the Census Bureau is directed to exclude undocumented persons and nonimmigrants, fewer congressional seats will be allocated to states with higher numbers of undocumented residents and nonimmigrants—states where Proposed Defendant-Intervenors reside. Proposed Defendant-Intervenors will be injured by their inclusion in unconstitutionally malapportioned districts, and their voting strength may be diluted by the reduction in the number of congressional districts in which Latino voters have a meaningful opportunity to participate in the electoral process and elect candidates of their choice.

Even putting aside the logistical nightmare that the Census Bureau would experience if it tried to collect immigration-status information about non-U.S.-citizen residents, information never before collected, any such attempt would likely cause higher nonresponse rates and a disparate undercount in population groups with higher numbers of immigrants than the population as a whole. In 2018, then-Acting Director of the Census Bureau Ron S. Jarmin declared in Congressional testimony, in response to inclusion of a potential citizenship question in the 2020 Census, that "we do expect if there is a negative impact, it would be largely felt in various

subgroups and immigrant populations, [and] Hispanic populations."[2] Despite this testimony, the Trump Administration recently disclosed that it has included a citizenship question in this year's field test for the 2030 Census.[3] A more intrusive, risk-laden, and untested inquiry regarding whether a census respondent is undocumented or a nonimmigrant would likely have an even greater disproportionate impact in those communities. The resulting undercount would decrease access to congressional representatives, result in vote dilution in districts with larger populations, and result in loss of majority-Latino districts that afford Proposed Defendant-Intervenors an equal opportunity to elect their candidate of choice.

Proposed Defendant-Intervenor Alejandra Ramirez-Zarate is a resident of Northridge, California. Ms. Ramirez-Zarate is a longtime registered voter and lives in the city of Los Angeles, California. According to American Community Survey ("ACS") data, California is 40.8 percent Latino and 12.7 percent non-U.S. citizen.

Proposed Defendant-Intervenor Juan Vazquez is a resident of Illinois. Mr. Vazquez is a longtime registered voter and lives in the city of Evanston, Illinois. According to American Community Survey ("ACS") data, Illinois is 19.4 percent Latino and 7.4 percent non-U.S. citizen.

Proposed Defendant-Intervenor Joey Cardenas is a resident of Texas. Mr. Cardenas is a longtime registered voter and lives in the city of Louise, Texas. According to American Community Survey ("ACS") data, Texas is 40.3 percent Latino and 10.7 percent non-U.S. citizen.

Proposed Defendant-Intervenor LCLAA is a nonpartisan, nonprofit civil rights organization based in Washington, DC, with over 1,000 dues paying members nationwide. Its mission is to educate, organize, and mobilize Latinos to have greater influence on workers' rights

[2] *Oversight of the 2020 Census: Hearing Before the Subcomm. on Com., Justice, Sci. and Related Agencies of the H. Comm. On Appropriations*, 115th Cong. 228 (2018) (statement of Ron Jarmin, Acting Dir., U.S. Census Bureau).
[3] Hansi Lo Wan, *Trump officials propose testing a citizenship question amid a push to alter the census*, NPR (Feb. 5, 2026, 1:25 PM), https://www.npr.org/2026/02/05/nx-s1-5584085/census-citizenship-question.

and the political process. LCLAA has approximately 550 members in California, more than 150 members in Texas, and more than 80 members in Illinois, all of which are states Plaintiffs allege would lose congressional representation should they prevail. As a 501(c)(3) nonprofit, LCLAA advances its mission through nonpartisan civic engagement, including bilingual voter education town halls and digital advocacy campaigns focused on voting rights and the U.S. Census.

Accordingly, Proposed Defendant-Intervenors file this motion to protect their clearly established interests.

III. ARGUMENT

a. The Proposed Defendant-Intervenors have standing to seek intervention.

The Eighth Circuit requires a proposed intervenor to "establish Article III standing in addition to the requirements of Rule 24." *Nat'l Parks Conservation Ass'n v. United States Envtl. Prot. Agency*, 759 F.3d 969, 974 (8th Cir. 2014) (internal quotations omitted). Article III standing contains three elements: (i) injury in fact; (ii) causation; and (iii) redressability. *Id.* Injury in fact first requires an actual or imminent invasion of a concrete, particular legal interest. *Id*; *see also Kuehl v. Sellner*, 887 F.3d 845, 850 (8th Cir. 2018). Causation for standing purposes requires a fairly traceable connection between the complained-of conduct and the alleged injury. *Iowa League of Cities v. E.P.A.*, 711 F.3d 844, 870 (8th Cir. 2013). Third, redressability requires a likelihood that a favorable decision will provide relief. *Sierra Club v. Kimbell*, 623 F.3d 549, 556 (8th Cir. 2010) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992)). A membership organization has standing if its individual members would otherwise have standing to sue in their own right. *See Kuehl*, 887 F.3d at 851.

Members of proposed Defendant-Intervenor LCLAA and Individual Defendant-Intervenors Juan Vazquez, Joey Cardenas, and Alejandra Ramirez-Zarate, will suffer an injury in

fact if this Court grants the relief Plaintiffs seek. If the 2020 Census Residence Criteria is enjoined, and the Census Bureau is directed to exclude undocumented persons and nonimmigrants from total population counts for purposes of apportionment, fewer congressional seats will be allocated to states with higher numbers of undocumented residents and nonimmigrants—states where Proposed Defendant-Intervenors reside. Proposed Defendant-Intervenors will be injured by their inclusion in unconstitutionally malapportioned districts, and their voting strength may be diluted by the reduction in the number of congressional districts in which Latino voters have a meaningful opportunity to participate in the electoral process. Proposed Defendant-Intervenors' ability to access fair political representation would unavoidably be harmed, which the Supreme Court has held to be a basis for standing. *See U.S. Dep't of Commerce v. U.S. House of Reps.*, 525 U.S. 316, 331-32 (1999) (*citing Baker v. Carr*, 369 U.S. 186, 208 (1962)).

Because the U.S. Department of Commerce must follow any Court order granting Plaintiffs relief, Defendant-Intervenors' injuries would be "fairly traceable" to the Department of Commerce. *Nat'l Parks Conservation Ass'n*, 759 F.3d at 975 ("Because the EPA would be compelled to cause the alleged injury to [NSP] if the [Environmental Groups] prevail[ ], NSP satisfies the causation element.") (internal citations and quotations omitted). Finally, Proposed Defendant-Intervenors injuries are redressable if they successfully prevent Plaintiffs from obtaining the relief they seek from this Court. Proposed-Defendant Intervenors thus satisfy the requirements of Article III standing.

b. Proposed Defendant-Intervenors are entitled to intervene as a matter of right.

A motion to intervene under Fed. R. Civ. P. 24(a)(2) must be granted where the proposed intervenor "(1) files a timely motion to intervene; (2) 'claims an interest relating to the property or transaction that is the subject of the action'; (3) is situated so that disposing of the action may, as a practical matter, impair or impede the movant's ability to protect that interest; and (4) is not

adequately represented by the existing parties.'" *Nat'l Parks Conservation Ass'n*, 759 F.3d at 975 (quoting Fed. R. Civ. P. 24(a)(2) and citing *South Dakota ex rel. Barnett v. United States Dep't of Interior*, 317 F.3d 783, 785 (8th Cir. 2003)). While the proposed intervenor must satisfy all four elements to prevail on a motion to intervene of right, "Rule 24 should be construed liberally, with all 'doubts resolved in favor of the proposed intervenor.'" *Id.* at 975 (quoting *Turn Key Gaming, Inc. v. Oglala Sioux Tribe*, 164 F.3d 1080, 1081 (8th Cir. 1999)).

Proposed Defendant-Intervenors satisfy each of these elements.

i. The motion to intervene is timely.

Courts weigh four factors when evaluating the timeliness of a motion to intervene: "(1) the extent the litigation has progressed at the time of the motion to intervene; (2) the prospective intervenor's knowledge of the litigation; (3) the reason for the delay in seeking intervention; and (4) whether the delay in seeking intervention may prejudice the existing parties." *ACLU of Minn. v. Tarek ibn Ziyad Acad.*, 643 F.3d 1088, 1094 (8th Cir. 2011) (citing *United States v. Ritchie Special Credit Invs., Ltd.*, 620 F.3d 824, 832 (8th Cir. 2010)). But "[t]he timeliness of a motion to intervene is determined from the totality of the circumstances." *Winbush v. Iowa By Glenwood State Hosp.*, 66 F.3d 1471, 1479 (8th Cir. 1995).

This action is in its earliest stages, which weighs in favor of granting intervention. Proposed Defendant-Intervenors' Motion to Intervene comes promptly after they learned of their interest in this case via the filing of Plaintiff's Complaint on January 30, 2026, *see* Dkt. 1. No Defendant has filed an answer, and Defendants' deadline to answer or otherwise plead has not passed. Further, as of the date of this filing, no discovery has been conducted, and no trial date has been set. At such an early stage of litigation, intervention is timely. *See Berry v. Ashcroft*, No. 4:22-CV-00465-JAR, 2022 WL 1540287, at *2 (E.D. Mo. May 16, 2022) (granting a motion to intervene filed "before

any discovery or responsive pleadings"); *see also Mille Lacs Band of Chippewa Indians v. State of Minn.*, 989 F.2d 994, 999 (8th Cir. 1993) (noting that parties would not be prejudiced as they "had not even commenced discovery" despite the motion to intervene having been filed 18 months after the case began).

Furthermore, Proposed Defendant-Intervenors sought to intervene at the earliest practicable opportunity after it learned its interests could be impacted by this litigation. Proposed Defendant-Intervenors are filing this Motion to Intervene within three months after Plaintiff filed its complaint. Because this case is at the earliest stages of litigation and Proposed Defendant-Intervenors have not delayed their intervention, neither Plaintiff nor Defendants will be prejudiced by the timing of Proposed Defendant-Intervenors' intervention. *See Berry*, 2022 WL 1540287 at *2 (stating that a motion to intervene filed before discovery or responsive pleadings "do[es] not risk prejudice to any party"). And "differing views on litigation strategy does not amount to prejudice." *Id.*

Accordingly, Proposed Defendant-Intervenors' motion is timely.

ii. Proposed Defendant-Intervenors seek to vindicate protectable rights.

The second intervention factor requires that the proposed intervenor have "a recognized interest in the subject matter of the litigation." *Nat'l Parks Conservation Ass'n*, 759 F.3d at 975 (quotations and citations omitted). A party must show "more than a mere economic interest; rather, the interest must be 'direct, substantial, and legally protectable.'" *Eischeid v. Dover Const., Inc.*, 217 F.R.D. 448, 468 (N.D. Iowa 2003) (quoting *Curry v. Regents of Univ. of Minn.*, 167 F.3d 420, 423 (8th Cir. 1999)).

Proposed Defendant-Intervenors satisfy this requirement because they seek to intervene to defend their right to participate equally in the electoral process, their right to fair representation in

the House of Representatives, and their right to a fair share of electoral college votes. Proposed Defendant-Intervenors have a direct and personal interest in ensuring that they do not receive fewer representatives and electors in states where the total population is expected to grow significantly, that their representational interests are not diminished by their inclusion in unconstitutionally malapportioned districts, and that their voting strength is not diluted by the reduction in the number of legislative districts in which Latino voters have a meaningful opportunity to participate in the electoral process and elect candidates of their choice. *See Baker*, 369 U.S. at 208 (voters challenging apportionment asserted "plain, direct and adequate interest in maintaining the effectiveness of their votes"); *see also Berry*, 2022 WL 1540287 at *2 ("The Proposed Intervenors have a personal and concrete interest in ensuring that they do not suffer voting disadvantages based on a constitutionally malapportioned map.") (citations omitted).

Courts have granted intervention for parties seeking to defend their interests in political access and equal representation cases. *See Nw. Austin Mun. Utility Dist. No. One v. Holder*, 129 S. Ct. 1695 (2009) (voters' motions to intervene granted by the district court in Dkt. No. 33); *Georgia v. Ashcroft*, 539 U.S. 461, 477 (2003) (holding that private parties may intervene in actions concerning § 5 of the Voting Rights Act of 1965 "to insure that no voting procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise"); *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 659 F.3d 421, 435 (5th Cir. 2011) (holding that a voter could intervene under Rule 24(a)(2) to challenge a consent decree allowing for a single-member electoral-district system in Boerne, TX); *Brown v. Sec'y of State of Florida*, 668 F.3d 1271, 1274 (11th Cir. 2012) (registered voters and non-profit organizations intervened as defendants in challenge to a state constitutional provision establishing standards for congressional districting); *Berry*, 2022 WL

1540287 at *2 (granting intervention where "The Proposed Intervenors' interest as voters in the constitutional apportionment of Missouri's congressional districts establishe[d] their sufficient stake in the litigation.") (internal quotations and citations omitted).

Proposed Defendant-Intervenors interests are protectable because they would be impaired in the event of an adverse decision. By seeking to exclude undocumented immigrants and nonimmigrants from the apportionment base, Plaintiffs unfairly target communities with large Latino and minority populations where substantial concentrations of undocumented immigrants and nonimmigrants reside. Should Plaintiffs prevail in this litigation, several states would be projected to lose seats in the House of Representatives and the Electoral College, despite the fact that their populations are anticipated to grow or remain stable. As a result, congressional members and electors in these states would represent a number of constituents that does not accurately reflect the *actual* total population, thereby harming the overall quality of Proposed Defendant-Intervenors' political representation.

Proposed Defendant-Intervenors' interests also diverge from the broader interests that Defendants pursue. Defendants are responsible for conducting the decennial census and tabulating the total population count used for congressional apportionment and allocation of Electoral College votes, but are not directly affected by a reduction in representation in Congress or the Electoral College. Proposed Defendant-Intervenors have a direct, substantial, and legally protectable interest in the outcome of this case, and respectfully ask the Court to provide them with the opportunity to defend their interest in preserving the quality of their political representation.

iii. Disposition of the case will impair Proposed Defendant-Intervenors' ability to protect their interests.

Proposed Defendant-Intervenors are "so situated that disposing of the action may as a practical matter impair or impede [their] ability to protect [their] interest." Fed. R. Civ. P. 24(a)(2).

As the advisory committee notes to Rule 24(a) state: "[i]f an absentee would be substantially affected in a practical sense by the determination made in an action, he should, as a general rule, be entitled to intervene." Fed. R. Civ. P. 24 Advisory Comm. Note to 1996 Amend. The "burden of showing that their interests are inadequately represented by the existing parties" is "minimal." *Nat'l Parks Conservation Ass'n*, 759 F.3d at 976 (quoting *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 989 F.2d 994, 999 (8th Cir. 1993)). A proposed intervenor is required only to "show that the disposition of the action *may* as a practical matter impair their interests." *Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist. No. 1*, 738 F.2d 82, 84 (8th Cir. 1984) (internal quotations omitted) (emphasis in original).

Plaintiffs seek relief that would severely harm the Proposed Defendant-Intervenors' right to access fair political representation. Plaintiffs seek to diminish the number of representatives and electors apportioned to the states in which Proposed Defendant-Intervenors reside, are registered to vote, and are politically active. This outcome would harm Proposed Defendant-Intervenors, as they reside in communities with high populations of non-U.S. who will not be counted towards the apportionment base. Proposed Defendant-Intervenors would suffer decreased voting strength in malapportioned districts, less access to their elected representatives, and a reduced voice at the federal level as the number of representatives and electors apportioned to these states would not accurately reflect the total population. Proposed Defendant-Intervenors thus cannot wait until the conclusion of the litigation to vindicate their interests.

iv. The existing parties before the Court cannot adequately represent Proposed Defendant-Intervenors' interests.

In seeking intervention, the proposed intervenors have the burden of demonstrating inadequate representation, but this burden is "minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972). The proposed intervenors need only show that representation "may

be" inadequate. *Id.* "[T]o determine the adequacy of representation, we must compare the interests of [a proposed intervenor] with the interests of the current defendants." *Kansas Pub. Emps. Ret. Sys. v. Reimer & Koger Assocs., Inc.*, 60 F.3d 1304, 1308 (8th Cir. 1995)

Here, current Defendants' interests are "sufficiently disparate" with those of Proposed Defendant-Intervenors. *See Berry*, 2022 WL 1540287 at *3 (holding proposed intervenors' interests were not adequately represented by existing parties in the case). The previous Trump Administration took a public position to exclude undocumented immigrants from the apportionment base in 2020. Proposed Defendant-Intervenors' expectation that Defendants will not properly defend the 2020 Census Residence Criteria or the inclusion of all residents of the states in the total population count used for apportionment, regardless of immigration status, is supported by President Trump's rescission of President Biden's executive order that required the inclusion of all persons in the apportionment count.

Even if Defendants adopt a position supporting the legality of the 2020 Census Residence Criteria and inclusion of all persons in the apportionment count, regardless of immigration status, Defendants and Proposed Defendant-Intervenors' interests are profoundly different. Proposed Defendant-Intervenors' foremost interests are their private interests in political access and representation. Defendants have no incentive to defend the use of a particular population base for apportionment; their stake in the litigation is limited to defending the 2020 Census Residence Criteria promulgated by the Census Bureau and the associated procedures.

In contrast, Proposed Defendant-Intervenors have a personal interest in defending the apportionment standard that underlies the rule and Constitutional requirement to include all persons in the apportionment count. Proposed Defendant-Intervenors' personal political access and representation depend on the apportionment of congressional seats and votes in the Electoral

College being adequately defended. Defendants will be required to adopt and implement new procedures or practices if Plaintiffs are successful. Proposed Defendant-Intervenors, however, will experience negative consequences in the form of diminished congressional representation and voting strength in the Electoral College, which Defendants will not personally bear.

Furthermore, Defendants must balance the cost associated with losing or settling the case against the cost to taxpayers for defending the 2020 Census Residence Criteria. At a minimum, Defendants' broader interests may result in divergent approaches to defending the 2020 Census Residence Criteria and the Constitution from that of Proposed Defendant-Intervenors. The potential for a difference in litigation strategy supports Proposed Defendant-Intervenors' motion for intervention.

Proposed Defendant-Intervenors would bear the greatest cost in the event of a favorable ruling for Plaintiffs. Such a decision will substantially alter the political climate in which Proposed Defendant-Intervenors live, vote, and are represented. Proposed Defendant-Intervenors' representation of their interests in this case will assist the Court in rendering a decision based on a full record, which will include the interests of those who will be most directly affected. Because Defendant-Intervenors' interests, at the very least, "may be" inadequately represented by Defendants, they are entitled to intervene as of right.

c. Proposed Defendant-Intervenors are entitled to permissive intervention.

Should the Court determine that Proposed Defendant-Intervenors are not entitled to intervene as a matter of right, Proposed Defendant-Intervenors ask the Court to exercise its discretion to allow permissive intervention under Fed. R. Civ. P. 24(b). Permissive intervention requires consideration of: "(1) whether the motion to intervene is timely; (2) whether the movant's claim shares a question of law or fact in common with the main action; and (3) whether

intervention will unduly delay or prejudice adjudication of the original parties' rights." *Franconia Mins. (US) LLC v. United States*, 319 F.R.D. 261, 266 (D. Minn. 2017).

First, Proposed Defendant-Intervenors' defenses share many questions of law and fact with the action as a whole. Proposed Defendant-Intervenors seek to preserve their states' congressional representation and Electoral College votes based on the definition of inhabitant as used in the 2020 Census Residence Criteria, and the long upheld use of total population as the basis for congressional apportionment and Electoral College votes.

Next, intervention will not unduly delay or prejudice the adjudication of the existing parties' rights because, as of the date of this filing, no Defendant has answered. Importantly, Proposed Defendant-Intervenors will introduce evidence and argument from the perspective of those who have a direct and personal stake in the outcome of this case: voters from the states that will lose congressional seats if undocumented immigrants or other nonimmigrants are excluded from the apportionment base. Finally, as discussed above, Proposed Defendant-Intervenors' motion is timely. *See supra* Section II.b.i.

Accordingly, Proposed Defendant-Intervenors requests the Court allow permissive intervention under Fed. R. Civ. P. 24(b).

IV. CONCLUSION

For the foregoing reasons, Proposed Defendant-Intervenors respectfully request that the Court grant their Motion to Intervene.

Respectfully submitted,

/s/ Javier A. Silva

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**pro hac vice* applications pending