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10		TES DISTRICT COURT
11		STRICT OF WASHINGTON ACOMA
12	MAUREEN MURPHY,	Civil Action
13	individually and on behalf of a class of similarly situated individuals;	No
14	JOHN HUDDLESTON,	
15	individually and on behalf of a class of similarly situated individuals,	
16	Plaintiffs,	
17		
18	v.	
19	GINA RAIMONDO,	COMPLAINT - CLASS ACTION
20	in her official capacity as Secretary of Commerce;	JURY TRIAL DEMANDED
21	DEPARTMENT OF COMMERCE, a federal agency;	
22	ROBERT SANTOS,	
23	in his official capacity as Director of the Bureau of the Census;	
24	BUREAU OF THE CENSUS,	
24	a federal agency,	
26	Defendants.	
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#### Introduction

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

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

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

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

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

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

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1		Plaintiffs
2	7.	Maureen Murphy is a United States citizen residing in the state of Washington
3	within the ge	eographical boundaries of the United States District Court for the Western District
4	of Washingto	on, 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 geograph	nical boundaries of the United States District Court for the Eastern District of
7	California, ai	nd 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 ca	apacity.
11	10.	Robert Santos is the Director of the Bureau of the Census, and he is sued in his
12	official capac	bity.
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 conduct	ing the American Community Survey. Each Defendant, acting in their respective
17	official capao	cities, has compelled Plaintiffs to answer the American Community Survey, told
18	Plaintiffs in v	writing that they are required by law to answer the survey, and threatened them with
19	monetary fin	es 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 1	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' fu	ndamental rights to speech and privacy.
24	15.	This Court has the power to grant declaratory and injunctive relief under 28
26	U.S.C. §§ 2	201 and 2202, 5 U.S.C. §§ 702 and 706, and Federal Rules of Civil Procedure 57
27	and 65.	
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1	16. Venue in this district is proper under 28 U.S.C. §§ 1391(b)(2), 1391(b)(3),
2	1391(e)(1)(B), and 1391(e)(1)(C). A substantial part of the events or omissions giving rise to the
3	claims occurred in this district. A substantial part of the property subject to the action is situated
4	in this district. One of the Plaintiffs resides in this district. And all Defendants are subject to this
5	Court's personal jurisdiction with respect to this action.
6	Facts
7	17. Maureen Murphy lives in a house in Gig Harbor, Washington. She intends to stay
8	at this house for the remainder of her life.
9	18. Census Bureau agents visited Ms. Murphy's house at least three times in
10	December 2021, and sent her at least two letters, Exhibit 1, Exhibit 2, and some brochures about
11	the American Community Survey, Exhibit 5. Via this correspondence, Defendants told
12	Ms. Murphy that she is required by U.S. law to answer the American Community Survey.
13	19. John Huddleston lives in a house in Susanville, California. He intends to stay at
14	this house for the remainder of his life.
15	20. A Census Bureau agent visited Mr. Huddleston's house at least once in January
16	2022 and sent at least one letter to Mr. Huddleston's house, Exhibit 8. Defendants asked him to
17	answer the American Community Survey and informed him that his response was required by
18	law.
19	21. The 2021 American Community Survey questionnaire that Defendants asked
20	Ms. Murphy and Mr. Huddleston to answer is available on the Defendants' website and is
21	attached as Exhibit 4.
22	22. The American Community Survey compels Maureen Murphy and John
23	Huddleston to give Defendants the following information:
24	a. the respondent's "race," including stating whether it is German, Irish,
24	English, Italian, Lebanese, Egyptian, Jamaican, Haitian, Nigerian, Ethiopian,
26	Somali, etc. Exhibit 4 at 2.
27	b. each household member's name, gender, age, and race, and the household
28	members' relationships with each other. Exhibit 4 at 3-6.

1	с.	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	1.	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.
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- whether the occupants have health insurance through their current or former employer, or whether it is purchased directly from an insurance company, Medicare, Medicaid, TRICARE, VA, Indian Health Service, or any other type of health insurance coverage. Exhibit 4 at 13.
- whether there is a premium for the health insurance plan (which "does not include copays, deductibles, or other expenses such as prescription costs"), and whether the occupants receive a tax credit or subsidy based on family 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.
- 13r.marital status, whether the occupants have been married, widowed, or14divorced, how many times they have been married, and the year of their last15marriage. Exhibit 4 at 14.
- s. fertility status and whether the occupants have had children in the past year,
   have minor grandchildren, or provide for the grandchildren's basic needs,
   and how long they have been providing for them. Exhibit 4 at 15.
  - t. whether the occupants have served in the military, served in the military during specific periods, and their VA service-connected disability rating (given in percentages). Exhibit 4 at 15.
- 22u.whether the occupants worked at a job the previous week, the employer's full23address, the occupants' method of commuting to work, whether they24carpool, the hour and minute of starting commute, the commute time in24minutes, and whether they have been laid off, temporarily absent from work,26or furloughed. Exhibit 4 at 16.

# 27v.whether the occupants have been actively looking for work the previous28week, the respondent's opinion on whether the occupants could have started

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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.	
2	Exhibit 4 at 17.	
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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,	

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

- 26. Defendants have stated on their: 3 website (https://perma.cc/RWG3-TR77), a. 4 b. in FAQ-style brochures (Exhibit 3), and 5 in guidance documents (Exhibit 6; TAM CC-TAM-PMTA-00063 (IRS 6 c. 7 TASM), 1995 WL 17844611), that answering the American Community Survey is mandated by law and refusal to answer carries 8 criminal fines of up to \$5,000. 9 **Statutory Background** 10 27. The American Community Survey is different from the decennial or ten-year 11 Census. The decennial Census is authorized by the Constitution's Enumeration Clause, which 12 requires an "actual Enumeration" of persons in the United States every ten years in order to 13 properly apportion congressional seats among the several states. U.S. Const. art. I, § 2, cl. 3. In 14 other words, to comply with the Constitution, the Census Bureau must count the actual number 15 of persons in the United States. Accordingly, sampling, which is a method for estimating the 16 number of people in a particular category by questioning only a subset of them, is forbidden for 17 use in place of an actual enumeration in the decennial Census. Department of Commerce v. United 18 States House of Representatives, 525 U.S. 316, 343 (1999). Sampling can be used to supplement or 19
- check for errors in the actual enumeration required by the Constitution, but such surveys must be
   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.
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29. As authority to conduct the American Community Survey, Defendants rely on
 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]	

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

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

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

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Plaintiffs Are Harmed by Defendants and Those Injuries Are Redressable in Federal Court 37. Defendants have compelled, are compelling, and will continue to compel Maureen Murphy and John Huddleston to answer the American Community Survey under the threat of imposing monetary fines.

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

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

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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**

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

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

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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.	

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

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

- 56. There are common questions of law and fact that unite the class, including:
- a. Whether the Defendants have the statutory authority to compel individuals to
   divulge information that the American Community Survey demands;
- b. Whether there is a violation of the nondelegation doctrine if the statutes were
  read to delegate to the Defendants the authority (i) to compel the production
  of information, and (ii) to disregard the class members' individual and
  fundamental rights to speech and privacy;
- c. Whether there is a violation of the nondelegation doctrine when the
   Defendants redefine a statutory violation as a crime, enhance the penalty, and
   then threaten class members with such fines when they refuse to answer the
   American Community Survey;
  - d. Whether Defendants violate class members' First Amendment rights;
    - e. Whether Defendants violate class members' fundamental right to privacy.
- 57. The claims brought by the named Plaintiffs are typical of the class, and the named
   Plaintiffs will fairly and adequately protect the interests of the class.
- 58. The relief sought is appropriate for the class as a whole because Plaintiffs demand
  declaratory and injunctive relief against Defendants prohibiting Defendants from compelling
  Plaintiffs and class members to answer the American Community Survey or risk monetary fines
  for refusing to answer. This relief equally impacts the entire class.
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1		Claims for Relief
2		Count 1:
3	<b>Defendants</b> '	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 C	ensus nor a statistical adjustment to the Census.
9	61.	Defendants and their officers or employees acted against Plaintiffs in their official
10	capacity unde	er 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	o compel individuals to answer such surveys.
14	63.	But Defendants have directed and compelled Plaintiffs and others to answer the
15	American Co	mmunity 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 g	et their authority to act from Congress. Defendants have no power to act unless and
19	until Congres	ss confers power upon them. Louisiana Public Service Commission v. FCC, 476 U.S.
20	355, 374 (198	6). Actions taken without statutory authority are <i>ultra vires</i> .
21	65.	Defendants' interpretation of the relevant statutes and the actions Defendants
22	took against l	Plaintiffs in pursuance thereof are arbitrary, capricious, an abuse of discretion, and
23	otherwise not	t 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, a	authority, or limitations, or short of a statutory right.
26	66.	Plaintiffs therefore demand declaratory and injunctive relief, including an order
27	enjoining De	fendants now and in the future from compelling Plaintiffs to answer the American
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1	ommunity 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	t forth here.	
7	68. Defendants and their officers or employees acted against Plaintiffs in their official	
8	pacity under the color of federal statutes, 13 U.S.C. §§ 141, 193, 221, and 18 U.S.C. §§ 3559,	
9	71.	
10	69. These statutes do not authorize Defendants to redefine the refusal-to-answer	
11	plation as a crime and impose a penalty enhancement by amending the \$100 fine to a \$5,000	
12	ne. Actions taken without statutory authority are ultra vires.	
13	70. Criminalizing a statutory fine is permissible only if the statute itself explicitly so	
14	ovides. 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	976).	
17	71. The crime-classifying statute, which classifies a pre-existing crime for which "no	
18	prisonment is authorized, as an infraction" and sets the fine of "not more than \$5,000" "for	
19	infraction," does not suspend, supersede, or otherwise amend 13 U.S.C. § 221(a), and is not	
20	herwise 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	swer the American Community Survey.	
23	73. Defendants' interpretation of the relevant statutes and the actions Defendants	
24	ok 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	e contrary to constitutional right, power, privilege, or immunity, in excess of statutory	
27	risdiction, authority, or limitations, or short of a statutory right.	
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1	74.	Plaintiffs therefore demand declaratory and injunctive relief, including an order
2	enjoining De	fendants now and in the future from compelling Plaintiffs to answer the American
3	Community	Survey, imposing any monetary fine on Plaintiffs for refusing to answer the survey,
4	or otherwise	taking any legal action against Plaintiffs for refusing to answer the survey.
5		Count 3:
6		13 U.S.C. §§ 141, 193, 221 Violate the Article I, § 1
7		Vesting Clause and the Nondelegation Doctrine
8	75.	Plaintiffs incorporate by reference all of the preceding paragraphs as though fully
9	set forth here	
10	76.	Article I, § 1 of the United States Constitution (emphasis added), states: "All
11	legislative Po	wers herein granted shall be vested in a Congress of the United States." ("Vesting
12	Clause").	
13	77.	The Supreme Court has interpreted the Vesting Clause to mean that any
14	delegation of	authority to an agency must have an intelligible principle.
15	78.	If the relevant statutes are read to grant Defendants the authority to compel
16	answers to th	e American Community Survey, then it is an open-ended grant of authority with no
17	intelligible pr	inciple.
18	79.	The relevant statutes, 13 U.S.C. §§ 141, 193, 221, and 18 U.S.C. §§ 3559, 3571,
19	provide no li	miting or intelligible principle to which Defendants are directed to conform when
20	carrying out 1	their functions. Mistretta v. United States, 488 U.S. 361, 372 (1989). The statutes fail
21	to provide a guiding principle and instead delegate to the agency authority to compel Plaintiffs to	
22	provide any information Defendants demand from them. As a result, the statutes are invalid	
23	because they	violate the Vesting Clause. <i>Id</i> .
24	80.	Alternatively, if 13 U.S.C. §§ 141, 193, 221 supply a sufficient intelligible principle,
24	then the doc	trine must be reexamined to adhere to the proper limits in the Vesting Clause of
26	Article I, § 1.	
27	81.	Any delegation is also invalid because delegation to agencies is valid only if private
28	rights are pr	cotected. American Power & Light Co. v. SEC, 329 U.S. 90, 105 (1946). Here,

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

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

Count 4: 12 13 U.S.C. § 221, and 18 U.S.C. §§ 3559, 3571 13 Violate the Article I, § 1 Vesting Clause and the Nondelegation Doctrine 14 Plaintiffs incorporate by reference all of the preceding paragraphs as though fully 84. 15 set forth here. 16 Article I, § 1 of the United States Constitution (emphasis added), states: "All 85. 17 legislative Powers herein granted shall be vested in a Congress of the United States." ("Vesting 18 Clause"). 19 86. Defendants cannot criminalize conduct on their own initiative. Congress must be 20 precise when it authorizes criminal sanctions, consistent with the rule of lenity. 21 87. If the statutes (13 U.S.C. § 221, and 18 U.S.C. §§ 3559, 3571) are read broadly to 22

give Defendants the power to criminalize the refusal-to-answer violation and enhance the criminal
penalty, then the statutes delegate authority in violation of the Vesting Clause.

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

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89. Alternatively, if 13 U.S.C. § 221, and 18 U.S.C. §§ 3559, 3571 supply a sufficient
 intelligible principle, then the doctrine must be reexamined to adhere to the proper limits
 contained in the Vesting Clause of Article I, § 1.

- 90. Defendants' interpretation of the relevant statutes and the actions Defendants took against Plaintiffs in pursuance thereof are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law. Defendants' interpretation and actions taken thereunder are contrary to constitutional right, power, privilege, or immunity, in excess of statutory jurisdiction, authority, or limitations, or short of a statutory right.
- 9 91. Plaintiffs therefore demand declaratory and injunctive relief, including an order 10 enjoining Defendants now and in the future from compelling Plaintiffs to answer the American 11 Community Survey, imposing any monetary fine on Plaintiffs for refusing to answer the survey, 12 or otherwise taking any legal action against Plaintiffs for refusing to answer the survey.
- Count 5: 13 Defendants, Via the American Community Survey, 14 Compel Plaintiffs to Speak in Violation of the First Amendment 15 92. Plaintiffs incorporate by reference all of the preceding paragraphs as though fully 16 set forth here. 17 93. The First Amendment freedom of speech includes both the right to speak freely 18 and the right to refrain from speaking at all. 19 94. Plaintiffs' personal information is private and protected by the First Amendment, 20 so Defendants cannot compel Plaintiffs to divulge that information to Defendants without 21

satisfying the First Amendment.

95. Compelled disclosure of information to the government violates the First
Amendment even if there is no disclosure to the general public. *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373 (2021). When a government entity mandates speech that a speaker would
not otherwise make, it necessarily alters the content of the speech. *Riley v. Nat'l Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 795 (1988). Such compelled disclosure must meet strict
scrutiny.

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96. Defendants' actions compelling Plaintiffs to answer the American Community Survey do not satisfy any level of scrutiny under the First Amendment.

2 3

97. The American Community Survey asks for highly personal and private
 information. It requires Plaintiffs to disclose sensitive and personal facts and opinions about
 themselves and their family members or face fines if they refuse.

- 98. Because 13 U.S.C. §§ 141, 193, 221, and 18 U.S.C. §§ 3559, 3571, and Defendants'
  actions taken thereunder, fail to satisfy the First Amendment, these sections and Defendants'
  actions taken thereunder violate Plaintiffs' right to freedom of speech.
- 9 99. Defendants lack authority to compel Plaintiffs to answer the American 10 Community Survey because 13 U.S.C. §§ 141, 193, 221, and 18 U.S.C. §§ 3559, 3571, are 11 unconstitutional as applied.

12 100. Defendants' interpretation of the relevant statutes and the actions Defendants 13 took against Plaintiffs in pursuance thereof are arbitrary, capricious, an abuse of discretion, and 14 otherwise not in accordance with law. Defendants' interpretation and actions taken thereunder 15 are contrary to constitutional right, power, privilege, or immunity, in excess of statutory 16 jurisdiction, authority, or limitations, or short of a statutory right.

17 101. Plaintiffs therefore demand declaratory and injunctive relief, including an order 18 enjoining Defendants now and in the future from compelling Plaintiffs to answer the American 19 Community Survey, imposing any monetary fine on Plaintiffs for refusing to answer the survey, 20 or otherwise taking any legal action against Plaintiffs for refusing to answer the survey.

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#### Count 6:

#### Defendants, Via the American Community Survey,

## Unconstitutionally Invade Plaintiffs' Fundamental Right to Privacy

- Plaintiffs incorporate by reference all of the preceding paragraphs as though fully
  set forth here.
- 103. The right to personal privacy is fundamental. The right to privacy is derived from
   the First, Third, Fourth, Fifth, Ninth, and Fourteenth Amendments, and is grounded in the right
   to liberty and property in one's personal information.

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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

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1	otherwise no	t 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 De	fendants 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 a	ll of the reasons stated above, Plaintiffs request relief as follows:
12	А.	Certify the class as defined.
13	B.	Declare that the Plaintiffs are not subject to fines or otherwise under any
14	compulsion t	o answer the American Community Survey; that no adverse legal consequences will
15	flow from the	eir 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. §§ 35	59, 3571, as not granting Defendants the authority (i) to compel Plaintiffs to produce
18	information t	hat the American Community Survey demands; (ii) to redefine a statutory violation
19	as a crime, er	hance the statutory penalty from \$100 to \$5,000, and then threaten individuals with
20	monetary fin	es when they refuse to answer the American Community Survey; and/or (iii) to
21	disregard Pla	intiffs' constitutional rights to speech and privacy.
22	D.	Enjoin Defendants now and in the future from requiring Plaintiffs to answer the
23	American Co	ommunity 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 Plain	tiffs for refusing to answer the American Community Survey.
28	G.	Award attorneys' fees, expenses, and costs.

H. Award such other relief as the Court deems just and proper. 1 DATED: May 24, 2022. 2 Respectfully submitted: 3 4 s/ Brian T. Hodges ADITYA DYNAR 5 **BRIAN T. HODGES** DC Bar No. 1686163\* WSBA No. 31976 Pacific Legal Foundation 6 3100 Clarendon Blvd., Ste. 610 Pacific Legal Foundation 7 255 South King Street, Suite 800 Arlington, VA 22201 Seattle, WA 98104 Telephone: (202) 807-4472 8 Telephone: (425) 576-0484 Email: ADynar@pacificlegal.org Email: BHodges@pacificlegal.org 9 MICHAEL POON 10 CA Bar No. 320156\* Pacific Legal Foundation 11 555 Capitol Mall, Ste. 1290 12 Sacramento, CA 95814 Telephone: (916) 419-7111 13 Email: MPoon@pacificlegal.org 14 \* pro hac vice applications forthcoming 15 Attorneys for Plaintiffs 16 17 18 19 20 21 22 23 24 24 26 27 28

## **ClassAction.org**

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: <u>Class Action: Consumers Take Issue with</u> <u>American Community Survey and Fines If They Refuse to Participate</u>