No. 26-205

In the Supreme Court of the United States

UNIVERSITY OF SOUTH FLORIDA COLLEGE REPUBLICANS, ET AL., APPELLANTS

v.

HOWARD W. LUTNICK, SECRETARY OF COMMERCE, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

MOTION OF THE FEDERAL APPELLEES TO AFFIRM

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QUESTIONS PRESENTED

1. Whether appellants lack Article III standing to challenge the use of statistical imputation in the 2020 decennial census.

2. Whether appellants' 2025 lawsuit challenging the 2020 census was untimely.

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OPINION BELOW

The opinion of the three-judge district court (J.S. App. 1a-75a) is reported at 839 F. Supp. 3d 1102.

JURISDICTION

The judgment of the three-judge district court was entered on July 7, 2026. A notice of appeal was filed on July 10, 2026 (J.S. App. 76a-77a). A jurisdictional statement was filed on August 6, 2026. The jurisdiction of this Court is invoked under Section 209(e) of the Department of Commerce and Related Agencies Appropriations Act, 1998 (1998 Act), Pub. L. No. 105-119, Tit. II, 111 Stat. 2482.

STATEMENT

1. a. The Constitution provides that, in order to apportion Members of the House of Representatives among the States "according to their respective Num-

bers," an "actual Enumeration * * * within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as [Congress] shall by Law direct." U.S. Const. art. I, § 2, cl. 3. Congress directed the Secretary of Commerce to conduct a census, as of April 1, 1980, and every tenth year thereafter, "in such form and content as he may determine." 13 U.S.C. 141(a). Congress also created the Bureau of the Census within the Department of Commerce to aid the Secretary in conducting the census. 13 U.S.C. 2, 4. Congress directed that the tabulation of population for congressional apportionment be completed within nine months of the decennial census date and reported by the Secretary to the President. 13 U.S.C. 141(b).

The President then must transmit to Congress, during the first week of its next session, "a statement showing the whole number of persons in each State" as ascertained by the decennial census "and the number of Representatives to which each State would be entitled under an apportionment of the then existing number of Representatives by the method known as the method of equal proportions." 2 U.S.C. 2a(a). Within fifteen calendar days, the Clerk of the House of Representatives must send to the Governor of each State "a certificate of the number of Representatives to which such State is entitled under this section." 2 U.S.C. 2a(b).

b. To date, the decennial census has largely been conducted by mail; the Bureau sends census forms to each address on a nationwide list of addresses. See *Utah* v. *Evans*, 536 U.S. 452, 457 (2002). If no response is received or if the response is inadequate, the Bureau will follow up with in-person visits. See *ibid.* The Bureau also will consult administrative records and, if nec-

essary, solicit proxy responses from neighbors or landlords. J.S. App. 7a-8a. But despite those efforts, and given the nine-month deadline, "the Bureau has always failed to reach—and has thus failed to count—a portion of the population." *Department of Commerce* v. *United States House of Representatives*, 525 U.S. 316, 322 (1999); see *Evans*, 536 U.S. at 457.

The Bureau has used statistical "imputation" as "the most practical way to" account for those missing persons. *Evans*, 536 U.S. at 458. The Bureau has employed several different types of imputation. *Ibid.* Relevant here is *count* imputation (including whole-person imputation), which "increases the population counts for enumeration." J.S. App. 5a n.3. This Court has held that the Bureau's limited use of imputation after exhausting its efforts to reach each individual comports with the constitutional requirement of an "actual Enumeration." *Evans*, 536 U.S. at 473-479.

c. Appellants are Representative Byron L. Donalds, who represents Florida's 19th congressional district; a pair of Florida political groups; and some of their officers. J.S. App. 2a-3a. They filed this suit in September 2025 to "broadly challenge the 'statistical methods' used during the 2020" decennial census. *Id.* at 4a; see *id.* at 9a. They invoked Section 209(b) of the 1998 Act, which provides a civil cause of action for "declaratory, injunctive, and any other appropriate relief" to "[a]ny person aggrieved by the use of any statistical method * * * in connection with the 2000 or any later decennial census, to determine the population for purposes of the apportionment or redistricting of Members in Congress." 111 Stat. 2481. In a third amended complaint, appellants additionally invoked the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* See J.S. App. 11a, 117a-121a.

According to appellants, "the Bureau 'omitted' an estimated 18.8 million people from the 2020" decennial census, and "then attempted to 'impute' the missing persons into the count." J.S. App. 5a. Citing the Bureau's post-enumeration survey (PES)—a statistical sampling survey conducted after each decennial census to "estimate the possible 'net coverage error rates at the national level' in the Bureau's population counts"—appellants allege that "the Bureau undercounted Florida's population by approximately 3.48 percent." *Id.* at 8a-9a. They allege that "Florida would have gained an additional House seat" if "imputation had not been employed." *Id.* at 9a. The operative complaint seeks "declaratory and injunctive relief," including an injunction "order[ing] a nationwide recount." *Id.* at 11a. A three-judge district court was convened. See 1998 Act § 209(e)(1) ("Any action brought under this section shall be heard and determined by a district court of three judges in accordance with section 2284 of title 28.").

2. The three-judge district court dismissed the operative complaint. J.S. App. 1a-75a.

a. The district court first held that appellants lacked Article III standing. J.S. App. 14a-38a. The court explained that standing requires a plaintiff to demonstrate an injury in fact caused by the defendant that is redressable by the requested judicial relief. *Id.* at 14a-15a. The court observed that appellants had asserted three injuries: "vote dilution due to the loss of one U.S. House of Representatives seat"; "the loss of funding for federal programs based on census population totals"; and "Representative Donalds's informational injury based on his reliance on inaccurate census data" when casting votes in the House. *Id.* at 15a. The court held that the vote-dilution and funding injuries "fail on cau-

sation and redressability," and that the informational injury "is neither cognizable as an injury in fact nor judicially redressable." *Ibid.*

Starting with the vote-dilution and funding injuries, the district court held that appellants failed to plausibly allege "a causal connection between" imputation and the Bureau's post-census survey showing that Florida was undercounted. J.S. App. 16a. The court observed that the Bureau "reported that the use of whole-person imputation during the 2020 Census had 'very little impact on net coverage error estimates,' and [appellants] allege no facts to undermine this assessment." *Id.* at 17a (citation omitted). The court further observed that the source for appellants' allegation that Florida's whole-person imputation was 3.6% also showed that "the nationwide rate was 3.4%," which meant that "excluding whole-person imputation data would thus seem to *increase* any undercount of Florida relative to the rest of the country." *Ibid.*

The district court also found that the vote-dilution and funding injuries are non-redressable. J.S. App. 17a-35a. The court acknowledged that, in *Evans*, this Court had found a post-census challenge to a method of imputation to satisfy redressability because a court could issue an "injunction requiring the Secretary to substitute a new census 'report' for the old one," and "it would seem 'substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision.'" *Id.* at 20a (quoting *Evans*, 536 U.S. at 463-464) (brackets and ellipsis omitted). But the district court observed that *Evans*'s redressability analysis emphasized that such relief "is not 'necessarily impracticable'" "where a lawsuit is 'brought

soon enough after completion of the census,' and 'before new Representatives are actually selected.'" *Id.* at 21a (quoting *Evans*, 536 U.S. at 462-463). The court explained that "none of those circumstances are present here, given the more-than-four-year-delay in filing suit and the substantial changes in Representatives following two federal elections and ongoing nationwide redistricting" since the 2020 decennial census. *Ibid.*

The district court found further redressability problems. The court noted that an order requiring the Bureau "to find and directly contact 18.8 million people whom the Bureau could not find in 2020 and who may live in different places now * * * seems exceedingly impracticable, if not impossible." J.S. App. 24a n.11. The court also noted that appellants' relief required actions by third parties not before the court (*i.e.*, the President and Congress), and that appellants had not shown that it was "substantially likely" that those parties would "effectuat[e] a new apportionment so late in the decennial process." *Id.* at 26a. Likewise, the court noted that appellants had not plausibly alleged that "any of the entities that manage" the "more than 350 federal programs [that] determine funding allocations 'based on census population totals'" would "likely update their funding formulas in response to a judgment." *Id.* at 27a-28a. Finally, the court rejected appellants' reliance on "a more relaxed redressability standard for procedural rights cases," explaining that appellants had not made any "allegations that [the government] violated any procedural rights, rules, or regulations." *Id.* at 31a.

Turning to Representative Donalds's informational injury, the district court explained that appellants had not "identif[ied] a single vote that [he] would have cast differently" if he had "had access to different census

data." J.S. App. 36a. The court also rejected appellants' reliance on Donalds's "advis[ing] his constituents about programs such as SNAP and Medicare, which set eligibility requirements using census data," explaining that Donalds "operated from the same set of census data that the administrators" of those programs use, and that appellants had not "explain[ed] how Representative Donalds was stymied in advising his constituents on how to navigate those programs." *Id.* at 37a. Finally, the court noted that Donalds "has not asserted a future injury in fact that could be redressed with [the] prospective relief" that appellants seek, especially given that he is not running for reelection but is instead "a candidate for Governor of Florida." *Ibid.*

b. The district court independently held that even if appellants had standing, their suit failed because the Section 209 claims were untimely and the APA claims were not cognizable. J.S. App. 38a-59a. As to timeliness, the court observed that 28 U.S.C. 1658(a) provides a four-year limitations period for "'civil actions arising under an Act of Congress enacted after' December 1, 1990," J.S. App. 10a (brackets omitted), and Section 209 was enacted after that date. See *id.* at 49a-52a. The court rejected appellants' reliance on 28 U.S.C. 2401(a), which provides a six-year limitations period for civil actions "commenced against the United States." See J.S. App. 52a-54a. Invoking the canon that the specific governs the general, the court explained that Section 1658(a) is "both the 'more specific' and 'more recent' of the two statutes" because it "applies to a narrow class of claims—only civil actions arising under federal statutes enacted since 1990," and was enacted many decades after Section 2401(a). *Id.* at 53a.

As to the APA claims, the district court held that they were not cognizable because the APA does not authorize judicial review "in situations where the Congress has provided special and adequate review procedures," as it did in Section 209. J.S. App. 41a (quoting *Bowen* v. *Massachusetts*, 487 U.S. 879, 903 (1988)). The court concluded that the APA claims were "duplicative" versions of appellants' Section 209 claims. *Id.* at 39a. The court further held that appellants had not identified a "final agency action" for their APA claims, as required for judicial review. *Id.* at 54a-59a. The court observed that appellants identified only the Bureau's February 2022 publication of the "2020 Census Operational Plan 5.0," but explained that "the 5.0 Plan is neither a decisionmaking process nor an action from which legal consequences flow" because it "was a retrospective summary" that simply "documented the operational adjustments [to the 2020 decennial census] that had already occurred during enumeration." *Id.* at 55a-56a.

c. Judge Merryday dissented. J.S. App. 62a-75a. In his view, the statistical claims were sufficiently complicated to "warrant explanation and exploration on a full record, including expert testimony," rather than dismissal. *Id.* at 67a. He opined that appellants had standing because "[e]stablishing in open court the accuracy of the census (or correcting the census, if the census is wrong)" is "a boon too valuable to forbear," especially given that Congress provided a cause of action in Section 209. *Id.* at 68a-69a; see *id.* at 72a-73a. He also viewed appellants' claims as timely on the ground that "Section 2401(a) is the more specific statute, specifically governing an action against the United States." *Id.* at 70a. Finally, he expressed the view that *Evans* should be reconsidered. *Id.* at 74a-75a.

ARGUMENT

Appellants renew their contentions (J.S. 11-31) that they have Article III standing and that their claims are timely. The three-judge district court was clearly correct to reject those contentions, and its decision does not raise any substantial federal question. Summary affirmance is thus warranted. See, *e.g.*, *Castañon* v. *United States*, 142 S. Ct. 56 (2021); *Independence Institute* v. *FEC*, 580 U.S. 1157 (2017).

1. The district court correctly held that appellants lacked Article III standing to bring their claims. "[T]o establish standing, a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 423 (2021). Although appellants below raised several alleged injuries, they rely in this Court solely on a vote-dilution injury resulting from Florida's purported loss of a congressional seat in the apportionment. See J.S. 11-27. That alleged injury does not satisfy any of the requirements for standing.

a. Appellants' allegations that Florida would have gained a congressional seat in the apportionment absent the challenged use of imputation are inherently speculative. That forecloses appellants' standing, whether framed as a failure to allege an actual injury of a lost seat or a failure to establish that the existing number of seats was caused by the challenged practice. An "actual or imminent" injury cannot be "speculative." *Food & Drug Administration* v. *Alliance for Hippocratic Medicine*, 602 U.S. 367, 381 (2024). And to establish causation, an alleged injury must be "fairly traceable" to the government's use of imputation in the 2020

decennial census. *Clapper* v. *Amnesty International USA*, 568 U.S. 398, 409 (2013). Neither is true of appellants' alleged vote-dilution injury.

Appellants' core claim is that Florida would have had an additional congressional seat under the present apportionment had the enumeration been conducted without using imputation. Calculating the apportionment "by the method known as the method of equal proportions," 2 U.S.C. 2a(a), is quite complicated, and the number of seats to which Florida is entitled depends not just on its own population, in a vacuum, but on the population of *every* other State. See U.S. Census Bureau, *How Apportionment is Calculated* (Apr. 16, 2021), www.census.gov/newsroom/blogs/random-samplings/2021/04/how-apportionment-is-calculated.html. Yet appellants have not done the work needed to plausibly plead that Florida in fact "lost" a seat as a result of imputation.

Appellants allege that Florida "missed an additional seat by 171,561 people," falling behind several States in the apportionment priority order that, they say, were overcounted. J.S. App. 102a (¶ 116); see *id.* at 104a (¶¶ 121-123, 125). But appellants also allege that Florida fell behind Texas, and that Texas was undercounted too. See *id.* at 103a-104a (¶¶ 116, 124-125). So in the counterfactual world in which no statistical imputation was used and every State was counted accurately, it is entirely speculative whether Florida would have moved ahead of Texas in the priority order for the last congressional seat, whether they both would have moved ahead of two other States, or whether the priority order otherwise would have resulted in Florida's gaining a seat.

In addition, appellants' claim rests on the results of the Bureau's 2020 post-enumeration survey, which esti-

mated that the 2020 decennial census undercounted Florida by 3.48 percent. See J.S. App. 108a (¶¶ 143-147). But the Bureau "reported that the use of whole-person imputation during the 2020 Census had 'very little impact on net coverage error estimates.'" J.S. App. 17a. Appellants thus have not established that the reported undercount is fairly traceable to the use of imputation. Quite the contrary: Appellants cite documents showing that "Florida's whole-person imputation rate was 3.6%, while the nationwide rate was 3.4%," indicating that Florida was assigned a proportionally *larger* population as a result of imputation than were other States on average. *Ibid.* In other words, any lingering undercount in Florida was likely *despite*, not because of, the use of imputation—without imputation, Florida's undercount relative to other States would have been even more pronounced. Accordingly, any alleged vote-dilution injury was likely caused not by the use of imputation, but by other factors affecting the 2020 decennial census that appellants have not challenged. Appellants' focus on the post-enumeration survey for their apportionment claim is particularly incongruous because the post-enumeration survey is a statistical estimate based on sampling a small fraction of housing units, and thus is the type of method that appellants themselves insist *cannot be used* for purposes of apportionment. See J.S. 35-37; 13 U.S.C. 195; U.S. Census Bureau, *Post-Enumeration Surveys*, perma.cc/G6WT-E6PE.

Quoting *Department of Commerce* v. *United States House of Representatives*, 525 U.S. 316, 332 (1999) (*House of Representatives*), appellants assert that this "Court has already held that '[t]here is undoubtedly a "traceable" connection between the use of [statistical methods] in the decennial census and [a State's] ex-

pected loss of a Representative.'" J.S. 18 (brackets in original). But the rationale in *House of Representatives* was tethered to the state-specific facts in that case: "There is undoubtedly a 'traceable' connection between the use of sampling in the decennial census and *Indiana's* expected loss of a Representative." 525 U.S. at 332 (emphasis added). The Court's conclusion relied on essentially unrebutted expert testimony that "Indiana [wa]s virtually certain to lose a seat" based on a study comparing an enumeration and apportionment with the challenged sampling to an enumeration and apportionment without the sampling. *Id.* at 331; see *id.* at 330 (describing the expert's study).

The record here is distinguishable. Appellants, who bear the burden of establishing standing, have not conducted a study similar to that in *House of Representatives*. They have not even plausibly alleged that a hypothetical study, if conducted, would result in Florida's gaining a seat. To the contrary, as noted above, appellants cite data showing that Florida had a higher imputation rate than the national average, suggesting that Florida was not harmed, as alleged, by the use of imputation in the 2020 decennial census.

In all events, appellants' alleged vote-dilution injury is a "generalized grievance[]" shared by all Floridians, not a "concrete and particularized" harm. *Lance* v. *Coffman*, 549 U.S. 437, [pin-cite] (2007) (per curiam). Even if Florida "lost" a seat in the decennial census, that does not treat any individual Florida voter any worse than any other Florida voter; all voters will still live in equally populated districts, albeit ones with slightly larger populations than if there had been an additional seat across which to spread the State's population. Nor would any Florida voter have a justiciable

claim that he is treated worse than a voter in some other State that gained the "lost" seat merely because the districts in Florida should have somewhat smaller populations while the districts in the other State should have somewhat larger populations. That *interstate* difference is not a "legally cognizable injur[y]" supported by "history and tradition." *TransUnion*, 594 U.S. at 424-425. The vote-dilution claims generally recognized in this Court have involved *intrastate* redistricting, where voters in one district claim *unequal treatment*—a "disadvantage to themselves as individuals" because of "constitutionally unjustifiable inequality vis-à-vis voters in irrationally favored" districts. *Baker* v. *Carr*, 369 U.S. 186, 206-208 (1962); see *Gill* v. *Whitford*, 585 U.S. 48, 65-66 (2018). Although appellants initially raised an intrastate redistricting claim, see J.S. App. 105a-106a (¶¶ 127-135), they no longer press that claim on appeal in this Court, cf. J.S. 16-31.

Accordingly, appellants' only claim is that Florida, as a whole, is entitled to an additional representative. That claim has nothing to do with treating individual voters in Florida *equally* with other voters in that State or any other State, but rather simply objects to Florida's "loss of political power" compared to some other State. *Raines* v. *Byrd*, 521 U.S. 811, 821 (1997). And that claim does not "deprive[] [appellants] of something to which they *personally* are entitled." *Ibid.* Rather, it is an injury to the State of Florida and its citizens generally, which cannot support standing for any individual voter. *Gill*, 585 U.S. at 65-69. Tellingly, claims such as appellants' have previously been brought by States themselves. *E.g.*, *Utah* v. *Evans*, 536 U.S. 452 (2002); *Franklin* v. *Massachusetts*, 505 U.S. 788 (1992).

b. In addition, appellants have not established that it is "'likely,' as opposed to merely 'speculative,' that the" alleged "[vote-dilution] injury will be 'redressed by a favorable decision.'" *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 561 (1992). That is so for some reasons that are related to those above as well as others that are independent.

As just noted, recalculating state population totals from the 2020 decennial census without imputation would likely reduce Florida's population both in absolute numbers and relative to the nationwide average. It is thus speculative that such a recalculation would redress the alleged vote-dilution injury, rather than exacerbate it.

Appellants argue that they seek to order the Secretary not just to recalculate the population based on the 2020 decennial census without using imputation, but to conduct "an accurate count 'by means of direct contact.'" J.S. 17; see J.S. App. 115a, 118a (¶¶ 190, 203) (seeking "mandatory relief that obligates the Defendants to correct the 2020 apportionment data and tabulation to account for the 18.8 million omissions by means of direct contact"). But based on the present record, it is implausible to presume that, having failed to contact those 18.8 million people in 2020 at their then-current addresses, despite multiple attempts at in-person contact and proxy solicitation, the Bureau would be able to directly contact all of those 18.8 million people nearly seven years after the fact—even though many of them might have moved or died. And even if the Bureau were to locate some of those allegedly uncounted individuals, it is anyone's guess whether such individuals would, in fact, be from Florida (as of April 1, 2020) as opposed to from some other State whose population would thereby

increase—such that it maintains its place or moves ahead of Florida in the priority order.

Appellants' particular request fails redressability for another reason: it is not something courts have the power to grant. Cf. *United States* v. *Texas*, 599 U.S. 670, 690 (2023) (Gorsuch, J., concurring) (lack of judicial authority to issue the requested remedy renders the claim non-redressable). The Constitution entrusts conducting the decennial census to Congress "in such Manner as they shall by Law direct," U.S. Const. art. I, § 2, cl. 3, and Congress in turn has delegated to the Secretary the authority to conduct the census "in such form and content as he may determine," 13 U.S.C. 141(a). Those broad grants of discretion leave a substantially limited role for the judiciary. See *Wisconsin* v. *City of New York*, 517 U.S. 1, 19-20 (1996).

In particular, courts may not superintend the conduct of the decennial census in service of some judicially imposed level of accuracy. When a district court enjoined the Bureau to continue field operations during the 2020 decennial census beyond the Bureau's planned end date—precisely in order to increase the in-person contact rate, just as appellants here now request—this Court stayed that injunction. See *Ross* v. *National Urban League*, 592 U.S. 994 (2020). The Court likewise stayed an order directing the Bureau to take actions "to compensate for" what a district court viewed as a "disproportionate undercount" in the 1980 decennial census. *Carey* v. *Klutznick*, 508 F. Supp. 420, 433 (S.D.N.Y. 1980), stayed, 449 US. 1068 (1980), and then reversed, 653 F.2d 732 (2d Cir. 1981), cert. denied, 455 U.S. 999 (1982). The requested relief in this case would result in an even greater and improper intrusion into Executive Branch operations.

Finally, as the district court explained (J.S. App. 25a-28a), appellants' vote-dilution injury is not redressable because redress would require independent action by third parties not before the Court. Even if a court were to order a new population and apportionment report, see 2 U.S.C. 2a(a), appellants' injury would not be redressed "unless the President accepts the new numbers, changes his calculations accordingly, and issues a new reapportionment statement to Congress." *Franklin*, 505 U.S. at 824 (Scalia, J., concurring in part). But the President "is not expressly required to adhere to the policy decisions reflected in the Secretary's report," *id.* at 799 (majority op.), and the President is neither a party nor could he be enjoined, *id.* at 802-803 (plurality op.). In addition, because the President already issued a reapportionment statement to the 117th Congress following the 2020 decennial census, and the Clerk of the House of Representatives of the 117th Congress already forwarded the entitlement certificates to the States, the current (119th) Congress, by statute, would have to take some additional action. See 2 U.S.C. 2a. Redress of appellant's injury thus additionally depends on the conduct of at least one independent non-party whom federal courts cannot command to take an official act. This point alone is a sufficient basis to defeat appellants' standing and summarily affirm the judgment below.

d. Appellants contend (J.S. 11-13) that despite all the above, they have standing under *Utah* v. *Evans*, *supra*. According to appellants, *Evans* is "on all fours with this case" because that case was also "brought 'after the census was complete,'" sought "an injunction requiring recalculation and recertification by the Bureau," and involved "a reasonable likelihood that a new count would,

as a practical matter, lead to a more favorable apportionment." J.S. 13-14 (quoting *Evans*, 536 U.S. at 460). That contention lacks merit.

Although *Evans* found that the State of Utah had Article III standing in that case, the Court emphasized that corrected entitlement certificates might be permissible if the original certificates were "found to rest upon a serious error—say, a clerical, a mathematical, or a calculation error in census data or in its transposition." 536 U.S. at 462. *Evans*, with the information established at that point in the proceeding, involved a simple mathematical claim: the number of individuals who had been imputed in each State were known; it was straightforward to instead "count[] the related number of individuals as zero"; and the "parties agree[d]" that "that difference mean[t] that North Carolina will receive one more Representative, and Utah will receive one less Representative, than if the Bureau had not used imputation." *Id.* at 458. As noted above, a similar calculation here—simply counting all imputed individuals as zero—would seem to make Florida relatively worse off, and appellants have not even attempted to establish that Florida would in fact gain a seat. Perhaps for that reason, appellants seek not a clerical or mathematical adjustment along the lines of *Evans*, but instead to reconduct the 2020 decennial census based on the conjecture that they would obtain a more accurate population count. That takes this case far outside of the ambit of *Evans*, where there was evidence of harm.

Evans also limited its redressability holding to cases brought "before new Representatives are actually selected." 536 U.S. at 462. "[I]f a lawsuit is brought soon enough after completion of the census," the Court explained, "relief [is not] necessarily 'impracticable.'" *Id.*

at 463. Here, in contrast, appellants did not bring suit until five years after the census was completed, during which time "44 states have redrawn their congressional districts (some, like Florida, more than once)" and "two federal elections have been held (with another this year), and new Representatives have been elected based on the new districts." J.S. App. 20a-21a. Based on its timing alone, appellants' suit is thus nothing like *Evans*. Indeed, appellants waited to bring suit for five years, and their requested relief would force the Bureau to reconduct and reconstruct the 2020 decennial census on a dime and based on mere conjecture.

e. Finally, appellants' reliance (J.S. 14-16) on relaxed Article III standing requirements for procedural injuries is misplaced. This Court has held that "when a statute affords a litigant 'a procedural right to protect his concrete interests,' the litigant may establish Article III jurisdiction without meeting the usual 'standards for redressability and immediacy.'" *Department of Education* v. *Brown*, 600 U.S. 551, 561 (2023). But as the district court observed, appellants have not made "a single allegation that [the government's] actions violated [their] procedural rights." J.S. App. 31a. Nor have they identified "any statute, rule, or regulation" granting them procedural rights "that the Bureau circumvented, ignored, or abused when conducting the 2020 Census." *Id.* at 33a.

Appellants observe that Section 209 defines a "statistical method" to include "any 'statistical *procedure*' 'to add or subtract counts to or from the enumeration of the population.'" J.S. 14-15; see 1998 Act § 209(h)(1), 111 Stat. 2483. But that is just semantics. Challenging the Bureau's use of a statistical procedure is not the same thing as alleging that one's own procedural rights

have been violated. Appellants' challenge to the Bureau's use of those imputation is a *substantive* challenge to the conduct of the decennial census, not an allegation that the Bureau breached a procedural right owed individually to appellants.

2. Appellants also challenge (J.S. 27-31) the district court's holding that, even if they had standing, their claims were untimely. The government has not pressed the argument, adopted by the court, that appellants' claims fell outside the applicable statute of limitations. Regardless, appellants' claims are plainly untimely because of their unjustified delay in bringing them.

The district court found that even if appellants had standing, their claims were untimely because they did not meet the four-year limitations period in 28 U.S.C. 1658(a). Appellants contend that the applicable limitations period is the six-year period in 28 U.S.C. 2401(a) because Section 2401(a) is the more specific statute and Section 1658(a)'s four-year period is expressly inapplicable where "otherwise provided by law." See J.S. 27-31. Determining which of Sections 1658 and 2401 is the more "specific" statute is not straightforward; the former applies to all civil actions under statutes enacted after 1990 (whether or not against the United States), while the latter applies to all civil actions against the United States (regardless of when the statute creating the cause of action was enacted). While Section 1658 is the later-enacted statute, and "would quite possibly win out," cf. *Department of Transportation* v. *Public Citizen*, 541 U.S. 752, 766 (2004), there is some force to appellants' argument that Section 1658 by its terms does not apply where "otherwise provided by law," and that Section 2401 is such a "law," 28 U.S.C. 1658(a).

The Court need not, however, wade through that morass for two reasons. First, as explained above, appellants lack Article III standing, which is a sufficient basis to summarily affirm the judgment below dismissing the suit on that ground. Second, independent of the statute of limitations, the claims here are untimely because of appellants' significant delay in bringing this case, absent adequate explanation or diligence, which is an independent reason to deny the equitable relief they seek. "The equitable doctrine of laches bars the plaintiff whose unreasonable delay in prosecuting a claim or protecting a right has worked a prejudice to the defendant." *SCA Hygiene Products Aktiebolag* v. *First Quality Baby Products, LLC*, 580 U.S. 328, 333 (2017).

Appellants' delay in bringing suit was unreasonable. Appellants were on notice that the 2020 decennial census likely would use imputation and thus should have brought suit earlier. The Bureau had long used imputation to account for unreachable persons, *e.g.*, *Evans*, 536 U.S. at 457-458 (2000 decennial census); *Carey*, 508 F. Supp. at 422 (1980 decennial census), and had announced its intention to use it for the 2020 decennial census well in advance, *e.g.*, U.S. Census Bureau, *2020 Census Operational Plan*, version 4.0, at 134 (Dec. 2018). Appellants also surely knew of the potential for undercounts in the 2020 census due to the pandemic. Cf. *National Urban League*, 592 U.S. at 995-996 (Sotomayor, J., dissenting). And at a minimum, appellants were aware of all of the facts alleged in their complaint no later than February 2022, when the Bureau released the "5.0 Plan." Appellants nevertheless waited until September 2025 to file suit—yet identify no obstacle that prevented an earlier filing and provide no explanation for the delay.

The delay is also prejudicial. Instead of promptly bringing suit to seek the requested relief of conducting the 2020 decennial census with more "direct contact," J.S. 115a, 118a (¶¶ 190, 203)—as the *National Urban League* plaintiffs did—appellants waited until long after the census was completed, the apportionment data was released, and state redistricting efforts were completed. Indeed, they waited until after two federal election cycles had taken place before bringing suit. And of course, requiring the Bureau to engage in the peculiar reconstruction of the 2020 decennial census demanded by appellants would consume critical agency resources based on appellants' latter-day speculation.

CONCLUSION

The judgment of the three-judge district court should be summarily affirmed.

Respectfully submitted.

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OCTOBER 2026