

Tsoov fwm Meskas cov Kev Cai Los Tiv Thaiv kev Suav Pej Xeem Yam Tsis Pub Leej Twg Paub

Tus sau yog Kelly Percival

Kev suav pej xeem xyoo 2020 twb los yuav txog. Txoj kev ncaj thiab kev suav pej xeem kom txhua yog nyob ntawm txhua tus neeg cov lus teb uas txwv tsis pub leej twg pom. Lub koos haum suav pej xeem yeej nco ntsoov rov qab hais txog txoj kev tseem ceeb yam txwv tsis pub leej twg pom nyob rau lawv lub hom phiav. Tsoom fwm Congress thiab ntau pawg thawj tswj kuj muaj kev pom zoo txog tswj yam tsis pub leej twg pom tau txoj kev suav kom raug.

Txawm li cas los, nyob rau niaj hnuv niam no, txoj kev ntseeg tsoom fwm Meskas mas tsawg heev, tshwj xeeb mas yog cov zej zog uas nqaj tawv txawv. Feem coob ntawm cov neeg kuj ntshai tsam lawv cov lus teb rau kev suav pej xeem rau xyoo 2020 raug muab siv los foob lawv los yog lawv tsev neeg raug tub ceev xwm tswj ciam teb los yog tub ceev xwm. Txhua txoj kev siv los suav pej xeem rau txoj kev no, tab sis, yuav mus rau txoj kev yam muaj cov kev cai los tiv thaiv kom txwv tsis pub leej twg pom txog cov kev suav pej xeem thiab yuav ua kom muaj kev sib foob.

Daim ntawv tshab xyuas txog txoj kev zoo heev, tiv thaiv los ntawm kev cai lij choj kom txwv lub koos haum suav pej xeem los yog lwm lub tuam tsev hauv tsoom fwm Meskas kom tsis txhob siv cov xov no los foob cov neeg uas nthuav cov xov no tuaj. Cov kev cai no yeej tiv thaiv yam tsis pub leej twg pom cov xov uas cov tib neeg qhia tuaj rau lub tuam tsev suav pej xeem, kom lav tau hais tias

cov lus teb txog kev suav pej xeem yuav tsis pub ncha dhau lub tuam tsev no tsuas yog muab sib faib, koj los suav yam tsis qhia leej twg paub.²

Kev tshab xyuas

Cov kev cai muaj kev tiv thaiv txwv tsis pub leej twg pom txog kev suav pej xeem qhia kom meej hais tias:

- Nws txhaum txoj cai rau lub Tuam Tsev Suav Pej Xeem los nthuav cov lus teb thaum suav pej xeem tsis hais nthuav li cas uas qhia tau hais tias tus neeg teb yog leej twg;
- Nws txhaum txoj cai yog leej twg los saib cov lus teb ntawm txoj kev suav pej xeem tsuas yog cov neeg ua hauj lwm rau lub Tuam Tsev Suav Pej Xeem, cov neeg uas tau tsa tes yuav tsis qhia rau leej twg vim ntshai txoj kev raug txim kev txhaum cai;
- Nws txhaum txoj cai yog lub Tuam Tsev Suav Pej Xeem nthuav cov lus teb rau lwm cov koos haum uas yog tsoom fwm Meskas li;
- Nws txhaum txoj cai yog kev suav pej xeem siv cov xov khaws tau yam tsis yog koj mus suav pej xeem, xws li tswj ciam teb los yog lwm txoj kev tswj kev ruaj ntseg; thiab

- 1 *Saib* U.S. Census Bureau, National Advisory Committee on Racial, Ethnic, and Other Populations, *2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Survey and Focus Groups: Key Findings for Creative Strategy*, p. 35 (Oct. 31, 2018), <https://www2.census.gov/cac/nac/meet-ings/2018-11/mcgeeny-evans-cbams.pdf> (“Yuav luag muaj li 1 ntawm 4 tus neeg teb ntshai tsav lawv cov lus teb rau txoj kev suav pej xeeem xyoo 2020 yuav siv los foob lawv”); *kuj mus saib* U.S. Census Bureau, *2020 Census Barriers, Attitudes, and Motivators Study Survey Report*, p. 1 (Jan. 24, 2019), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2020-report-cbams-study-survey.pdf> (“Muaj tsawg tshaj li ntawm xya tsev neeg thaum kaum tsev tau hais tias lawv yuav teb daim ntawv suav pej xeeem”).
- 2 Lub Tuam Tsev Suav Pej Xeeem is koom tes nrog rau U.S. Department of Commerce. Txhua txoj kev cai sab laj hauv no uas muaj feem cuam nrog rau lub Tuam Tsev Suav Pej Xeeem yeej khi tau lub koos haum Commerce Department, thiab txhua qhov hais txog lub Tuam Tsev Suav Pej Xeeem yej txhim kho nrog rau lub koos haum Commerce Department.

- Nws txhaum kev cai yog hais tias lub koos haum suav pej xeem los yog lwm cov koos haum ntawm tsoom fww Meskas los siv cov kev suav pej xeem los tsim kev kub ntxhov rau tus neeg uas muab cov xov no tuaj.

Cov kev tiv thaiv no tshwm sim los ntawm ntau txoj kev cai hais txog kev suav pej xeem, nrog rau:

- Tsab cai Census Act, 13 U.S.C. § 1 et seq.;
- Tsab cai Tiv Thaiv Txwv Tsis Pub Leej Twg Pom thiab Kev Suav Pej Xem (The Confidential Information Protection thiab Statistical Efficiency Act) (CIPSEA), 44 U.S.C. § 3501, Faj seeb;
- Tsab cai Ceev Ntiag Ntug (The Privacy Act, 5 U.S.C. § 552a); thiab
- Tsab cai Tswj Kev Ntsuas Se (The Internal Revenue Code), 26 U.S.C. § 1 et seq.

Thaum tso ua ke lawm, cov kev cai no thiab cov kev tiv thaiv yuav muaj kev puas tsuaj hnyav heev yog siv cov xov suav pej xeem no yam tsis raws cai.

Tsab cai kev suav pej xeem txwv lub koos haum suav pej xeem kom tsis txhob nthuam cov kev suav pej xeem yam qhia tau hais tias tus neeg uas teb cov los suav pej xeem no yog leej twg.

Tsab cai txog kev suav pej xeem (The Census Act) muaj qee yam, kev tiv thaiv rau txoj kev txwv tsis pub leej twg pom txog kev suav pej xeem. Cov kev tiv thaiv no yeej siv tau los ntawm lub tuam tsev (Commerce Department) thiab txhua chav, nrog rau Tuam Tsev Suav Pej Xeem, Tuam Tsev cov neeg ua hauj lwm ib ntus xws li cov neeg mus suav pej xeem, thiab cov neeg sawv cev rau tsoom fww hauv zos rau lub Tuam Tsev Suav Pej Xeem.³ Nyuam qhuav thaum lub 12 hlis xyoo 2018, tus neeg tuav ntaub ntawv rau (commerce) tau lees paub hais tias lub Tuam Tsev Suav Pej Xeem yuav ua lawv txoj dej num los tiv thaiv yam tsis pub lwm tus pom.⁴

Tsab cai The Census Act txwv lub Tuam Tsev Suav Pej Xeem kom tsis txhob nthuav cov xov uas yuav qhia tau saib tus neeg teb kev suav pej xeem yog leej twg. Lub Tuam Tsev Suav Pej Xeem yuav tsum tsis txhob sau tawm los yog nthuav tib neeg cov xov tseem ceeb rau ib txoj kev twg li.⁵ Qhov no txhais tau hais tias, txawm hais tias lub Tuam Tsev nthuav txog kev suav pej xeem thiab los luj cov ntaub ntawv txog kev suav pej xeem, yuav tsum ua zoo kom cov ntaub ntawv qhia tsis tau tus tib neeg los yog lawv cov xov tseem ceeb.⁶

Txuas ntxiv, tus neeg teb cov kev suav pej xeem yuav tsum nthuav tsis tau thaum muaj ib rooj plaub. Yuav siv tsis tau “rau txhua hom laj thawj” coj mus hais plaub los yog coj mus teev ntawv tseg yam tsis muaj kev tso cai los ntawm tus neeg uas teb cov xov tseem ceeb ntawv.⁷ Lub tsev hais plaub tshaj plaws (U.S. Supreme Court) tau lees hais tias txoj kev no txwv tus neeg teb cov lus no kom los nthuav rau kev muaj cai saib cov xov tseem ceeb (Freedom of Information Act) losyog lawv thov tuaj, txawm hais tias kev thov tuaj yog coj mus siv suav pej xeem los yeej nthuav tsis tau.⁸

Qhov kawg no, tib neeg cov lus teb kev suav pej xeem yuav tsum tsis pub siv “rau txoj kev phem” rau tus neeg teb los yog lwm tus neeg uas cov ntaub ntawv no muaj feem cuam nrog rau.⁹ Cov Thawj neeg tswj yeej tau lees ntau lwm hais tias yuav tsis muaj neeg raug kev puas tsuaj los ntawm cov lus txog cov xov kev suav pej xeem, thiab txoj kev suav pej xeem no tsis muaj feem nrog kev tswj ciam teb los yog tub ceev xwm hauv teb chaws, lub xeev, los yog hauv zej zos.¹⁰

Tsab cai The Census Act txwv tsis pub lwm tus neeg tsuas yog cov neeg ua hauj lwm rau lub Tuam Tsev Suav Pej Xeem thiaj los saib tau cov lus teb txog kev suav pej xeem.¹¹ Tuam Tsev Suav Pej Xeem cov neeg ua hauj lwm uas yuav tsum tau saib cov lus teb txog kev suav pej xeem tau cog lus los tiv thaiv yam tsis pub lwm tus neeg pom tas tiam no. Tus neeg ua hauj lwm twg uas nthuav cov xov no yam tsis raws kev cai yuav raug nplua txog li ntawm \$250,000 thiab raug kaw ntev li ntawm tsib xyoos.¹²

3 13 U.S.C. §§ 9(a), 23(c).

4 *Saib* Tsav ntawv txog Kev Txwv Tsis Pub Lwm Tus Pom Kev Suav Pej Xeem los ntawm Sec. Ross mus rau Sen. Schatz, 12 hlis, 19, 2018, <https://apps.npr.org/documents/document.htm-1?id=5675696-Dec-19-2018-Letter-on-Census-Confidentiality>.

5 13 U.S.C. § 9(a)(2) (Tuam tsev Commerce Department yuav tsum tsis txhob “tsis txhob sau ntawv txog cov kev suav pej xeem uas yog cov xov no tsim los ntawm ib lub tuam tsev twg los yog tus tib neeg twg uas yuav qhia tau saib lawv yog leej twg”); *kuj mus saib Baldrige v.*

- 13 U.S.C. § 8(b) (cov ntawv suav pej xee yuav tsum tsis “txhob nthuav cov xov los ntawm, los yog sawv cev ntawm, tus neeg teb cov lus no”).⁷ 13 U.S.C. § 9(a).
- 8 *Saib Baldrige*, 455 U.S. at 349, 361 (cov tuam tsev hais txog kev suav pej xee tsis tsim nog tau cov chaw nyob ntawm teev tseg rau tsab
cai Freedom of Information Act, txawm hais tias “tsab cai pom zoo nthuav tawm FOIA,” vim tsab cai Census Act “txwv tsis pub txhua txoj
9 kev nthuav cov xov txog kev suav pej xee yam tsis tau muab kho li”).
10 13 U.S.C. § 8(c). Tsab cai The Census Act tsis txhais “kev puas tsuaj.”
11 *Saib, e.g.*, Proclamation No. 8488 (lub 3 hli 31, 2010) (Pres. Obama lees paub hais tias cov xov tseem ceeb txog kev suav pej xee “yuav tsum
tsis siv los mus foob [ccov neeg koom kev suav pej xee] los yog nthuav rau tsoom fwr los yog pej xee cov koos haum”); Proclamation No. 6105
(Lub Peb hlis. 6, 1990) (Pres. George H. W. Bush lees paub hais tias cov xov tseem ceeb txog tib neeg uas khaws tau yuav tsis pub siv mus
nrho se, mus tshawb fawb, los yog tswj, los yog muaj feem nrog rau kev ua tub rog los yog ua pej xee txiav txim, txoj mus kawm ntawv,
tswj ciam teb, los yog tub ceev xwm hauv teb chaws Meskas, lub xeev, los yog hauv zos los yog kev tswj kom ua yog”); Proclamation No.
3973 (Lub 3 hlis. 24, 1970) (Pres. Nixon Bush lees paub hais tias cov xov tseem ceeb txog tib neeg uas khaws tau yuav tsis pub siv mus nrho
se, kev tshawb fawb, los yog lwm txoj kev yuav muaj kev puas tsuaj rau tus tib neeg”).
12 13 U.S.C. § 9(a)(3) (Club Tuam Tsev Suav Pej Xee yuav tsum tsis txhob “tso cai rau leej twg yuav tsum yog cov tub ceev xwm thiab
cov neeg ua hauj lwm rau lub Tuam Tsev los yog chav los yog koos haum los soj tib neeg cov kev qhia tuaj”).
13 U.S.C. § 214; 18 U.S.C. §§ 3559, 3571.

Txuas ntxiv rau cov neeg ua hauj lwm rau lub Tuam Tsev Suav Pej Xeem, tej zaum kuj tso cai rau tuam tsev Department of Homeland Security (DHS) cov neeg ua hauj lwm uas saib xyuas kev ruaj ntseg hauv computer yuav mus saib tau kev suav pej xeem xyoo 2020 uas muab khaws cia hauv computer. Tsab cai The Federal Cybersecurity Enhancement Act of 2015 tso cai rau DHS mus saib tau cov xov tseem ceeb ntawm txhua lub koos haum uas yog tsoom fwm li, nrog rau lub Tuam Tsev Suav Pej Xeem, sau los ntawm computer los yog muab khaws cia hauv computer. DHS kuj mus saib tau cov xov no, tab sis, *tsuas yog siv los tiv thaiv kom txhob muaj kev ua phem hauv computer xwb.*¹³ Tab sis, Raws li lub Tuam Tsev Suav Pej Xeem tau teev tseg, nws “yuav txhaum cai” yog DHS siv cov kev suav pej xeem no yam lawv mus saib tau es yog tsis siv rau txoj kev tiv thaiv kom txhob muaj kev ua phem hauv computer, xws li tswj ciam teb los yog tub ceev xwm.¹⁴

Txuas ntxiv, txoj kev pab uas DHS tseem siv los tiv thaiv kev ua phem yam siv computer – EINSTEIN tshooj 3A – muaj DHS nrog rau cov xov uas muab kho tag.¹⁵ EINSTEIN 3A “tsis muaj DHS kev mus saib cov neeg teb cov xov txog lawv tus kheej.”¹⁶ Thiab DHS hais tias kom txhua tus neeg ua hauj lwm nrog rau EINSTEIN los kos npe cog lus hais tias yuav tsis nthuav cov xov txog tib neeg tawm. Yog yuam cai ntawm daim ntawv cog lus no kuj yuav muaj kev nplua txim, xws li poob hauj lwm.¹⁷ Txuas ntxiv, lub Koos Haum yeej tau ua hauj lwm nrog rau DHS los tsim cov kev ruaj ntseg ntxiv “kev sau, kev ceev, kev siv, thiab kev nthuav cov xov tseem ceeb.”¹⁸ Cov kev ruaj ntseg kuj muaj xws li “kev ceeb toom thiab kev nthuav tawm yam kom ua raws li hais yog hais tias tsam muaj kev tsis tau tso cai tab sis mus saib, siv, faib cov kev suav pej xeem no tawm yam qhia rau Tuam Tsev Suav Pej Xeem hais tias yuav tshwm sim.”¹⁹

Lub tsev hais plaub U.S. Supreme Court tau los cim nco hais tias kev suav pej xeem yam tsis pub lwm tus pom yog ib qho tseem ceeb txog kev suav pej xeem kom saib muaj nqis. Lub tsev hais plaub Supreme Court tau los txiav txim hais tias, raws li tsab cai Census Act, “tus Thawj tswj kev Suav Pej Xeem tsis muaj kev xav seb puas yuav tso cov ntaub ntawv no tawm, txawm hais tias txoj kev nthuav ntawv ntaus nqi hais tias muaj txiav ntsim.”²⁰ Lub Tsev Hais Plaub txiav txim hais tias tsoom fwm Congress yeej ua kom tsab cai Census Act los tiv thaiv txhua cov ntaub ntawv uas tsis tau kho kom txhob nthuav tawm, txawm hais tias cov ntaub ntawv qhia tsis tau tus nteeg ntawv yog leej twg.²¹

Qhov tshwj xeeb tshaj es yuav tsum txwv tsis pub nthuav tawm, lub Tsev Hais Plaub tau piav meej, cia siab rau kev qhia pej xeem txog qhov tseem ceeb ntawm kev koom tes thiab ua kom pej xeem ntseeg hais tias cov xov tseem ceeb uas tau nthuav rau lub Tuam Tsev Suav Pej Xeem yuav tsis muab nthuav tawm.”²² Thiab “tsuas yog nthuav cov xov uas tsis tau kho li muab nthuav los ntawm cov tib neeg mas thiaj lav tau kom pej xeem ntseeg.”²³

Lub koos haum Chav Tswj Kev Ncaj Ncees (U.S. Department of Justice) tau ntaus nqi txog kev tseem ceeb npaum li cas txog kev txwv tsis pub lwm tus neeg pom kom kev suav pej xeem thwj. Lub koos haum Chav Tswj Kev Ncaj Ncees (The Justice Department) tau cim txog txoj kev nthuav cov xov tseem ceeb “kuj yuav ua rau coob leej yuav tsis kam koom tes los nthuav lawv cov xov tseem ceeb thiab yuav ua rau txoj kev suav pej xeem kom raug mas nyuaj heev.”²⁴ Yog vim li ntawv, ua ntej tsoom fwm Congress tau tsim tsa txoj cai tiv thaiv txwv tsis pub lwm tus neeg pom ces tam sim no kom lub Tuam Tsev Suav Pej Xeem siv, lub koos haum tsab cai yog los txhais txoj kev cai lij choj “txwv tiag tiag txog txoj kev nthuav tawm tsis hais rau tsoom fwm los yog tib neeg txog cov xov tseem ceeb uas yuav qhia tau saib lawv yog leej twg thiab lawv sib txheeb li cas.”²⁵

Lub koos haum Chav Tswj Kev Ncaj Ncees (The Justice Department) kuj tau teev lus hais tias “Yuav tsum tsis muaj kev xav lwm yam li” hais tias tsab cai Census Act yeej tsim los ceev meej hais tias lawv thiab lawv cov xov tseem ceeb uas qhia tuaj rau lub Tuam Tsev Suav Pej Xeem yuav “tuav yam tsis pub leej twg pom hlo li los ntawm lub koos haum” thiab kom lub koos haum yuav tsum “ua raws nraim li lawv txoj kev ib txwm ua .. yam tsis txhob muab nthuav tawm cov kev suav pej xeem rau lub zej zog” thaum twg nthuav tawm “yuav ua tau kom paub saib lawv yog leej twg txog cov xov uas txwv tsis pub leej twg pom.”²⁶ Qhov no muaj xws li nthuav cov xov nrog rau tsoom fwm lwm tus neeg los yog lwm lub koos haum. Piv txwv, raws li tsab cai tso cai rau lub koos haum Ceev Keeb Kwm Teb Chaws (National Archives) kev tso cai dav mus saib lub koos haum cov ntaub ntawv yam coj mus khaws cia, lub tuam tsev tswj kev ncaj ncees (Justice Department) txiav txim hais tias txhua cov ntawv suav pej xeem uas muab rau koos haum khaws keeb Kwm los yeej tseem tau ua raws li tsab cai Census Act’s txoj kev txwv tsis pub lwm tus neeg pom thiab yuav muab nthuav tawm tsis tau.²⁷

14 Dep't of Commerce, Census Bureau, *Xa mus rau OMB Rof soj ntsuameview*; Thov Tawm Tswv Yim; Kho, 82 Fed. Reg. 31,553,
31,554 (Lub 7 hli 7, 2017).

15 *Id.*

16 *Id.*

17 *Saib* Dep't of Homeland Security, *Privacy Impact Assessment Update 2*, 5, 6 (2016),
<https://www.dhs.gov/sites/default/files/publications/privacy-pia-nppd-einstein3a-may2016.pdf>.

18 82 Fed. Reg. at 31,554.

19 *Id.*

20 *Baldrige*, 455 U.S.

ntawm 358. 21 *Id.* at 356–

58.

22 *Id.* at 361; *kuj mus saib Carey v. Klutznick*, 653 F.2d 732 (2d Cir. 1981); *McNichols v. Klutznick*, 644 F.2d 844, 845 (10th Cir. 1981);
Seymour v. Barabba, 559 F.2d 806, 807–08 (D.C. Cir. 1977); *United States v. Bethlehem Steel Corp.*, 21 F.R.D. 568, 570–71 (S.D.N.Y.
1958).

23 *Baldrige*, 455 U.S. at 361.

24 *Ckev suav pej xeem tsis muaj rau Poj niam koos haum Bureau of Dep't of Labor thiab Tib leeg*, 36 U.S. Op. Atty. Gen. 362, 364–65 (1930).

25 *Id.*

26 41 U.S. Op. Atty. Gen. 120, 124–25 (1953).

27 *Txwv Tsis Pub Lwm Tus Pom Txog ntauw Suav Pej Xeem*, 40 U.S. Op. Atty. Gen. 326, 328 (1944) (“Yauv kom muaj cov lus qhia meej
txog cov kev cai txog kev ceev ntauw ntawv uas feem nrog rau tsoom fwv Congress yam lub hom phiaj los ntawm cov kev cai
txog kev tsis nthuav tawm”).

Lub koos haum Chav Tswj Kev Ncaj Ncees Cov Kws Lij Choj Chav Ua Hauj Lwm (The U.S. Department of Justice’s Office of Legal Counsel) yeej tau hais tas mus li hais tias tsab cai the Census Act txwv tsis pub lwm tus pom muaj cai tshaj lwm cov kev cai uas tso cai rau txoj kev nthuav cov xov tseem ceeb tawm. Kws Lij Choj chav ua hauj lwm tau nug saib cov kev cai hauv teb chaws Meskas puas tso cai rau kev nthuav tawm txog tib neeg cov xov tseem ceeb yam muaj kev tso cai los nthuav ntawm kev suav pej xeeem. Txhua zaus, tau los txiav txim hais tias tsab cai Census Act kev tiv thaiv toj kev txwv tsis pub leej twg paub yeej mua cai tshaj li lwm cov kev cai thiab txwv tsis pub nthuav tib neg cov xov tseem ceeb.

Thaum xyoo 1999, Kws Lij Choj chav ua hauj lwm tau los txiav txim hais tias tsab cai Census Act kev txwv tsis pub lwm tus pom muaj cai tshaj cov kev cai tswj ciam teb uas tso cai rau tsoom fwm nthuav rau lub koos haum Tswj Ciam Teb thiab Kev Ua Pej Xeeem Meskas txog kev ua pej xeeem los yog saib muaj ntaub ntawv nyob teb chaws no li cas tsis hais lwm txoj kev cai hauv Teb Chaws Meskas, Xeev, los yog hauv zej zos tsab cai.²⁸ Kws Lij Choj chav ua hauj lwmn tau los txiav txim hais tias txawm muaj cov lus dav dav no los tsis muaj kev tso cai los nthuav tawm cov ntaub ntawv txog kev suav pej xeeem “txawm hais tias tsoom fwm Meskas tau cog lus los tiv thaiv kev txwv tsis pub leej twg pom.”²⁹

Thaum xyoo 2010, Kws Lij Choj chav ua hauj lwm tau los txiav txim tib yam nkaus kom saib taus tsab cai USA PATRIOT Act. Tsab cai The PATRIOT Act tso cai rau tus kws lij choj hauv zos mus muab “txhua yam uas muab tau” los ntawm tsoom fwm Meskas cov koos haum yam siv los tshawb fawb txog kev puas tsuaj rau lub teb chaws “txawm hais tias muaj lwm txoj kev cai.”³⁰ Txawm hais tias muaj cov lus zoo thiab tsoom fwm Congress muaj hom phiaj tso cai rau tsoom fwm Meskas mus tawm tsam tiv thaiv txoj kev puas tsuaj rau lub teb chaws, Kws Lij Choj chav ua hauj lwm tau los txiav txim hais tias tsis muaj ib nqe lus ntawm tsab cai PATRIOT Act yuav muaj cai tshaj tsab cai los tiv thaiv txoj kev txwv tsis pub lwm tus neeg pom txog kev suav pej xeeem.³¹

Cov kev cai no yeej hais meej hais tias tsab cai Census Act txwv tsis pub nthuav ib cov xov tseem ceeb txog kev suav pej xeeem rau leej twg hlo li.

Lub Koos Haum Suav Pej Xeeem kuj siv tau txoj kev Suav Pej Xeeem Los Suav Pej Xeeem Nkaus Xwb.

Tsab cai The Census Act txwv tsis pub tsoom fwm siv cov kev suav pej xeeem dhau li txoj kev suav pej xeeem. Tsab cai The Census Act yeej hais meej hais tias tib neeg cov ntawv kev suav pej xeeem tsuas siv coj los mus “suav nkaus xwb thiab siv raws li hais.”³² Lub Koos Haum Suav Pej Xeeem tsab cai yeej hais tib yam txog kev txwv.³³

Txuas ntxiv, thaum lub Koos Haum kuj nthuav tau cov “muab kho” thiab lwm cov “kev suav muab tso ua ke” ntawm cov kev suav pej xeeem mus rau tsoom fwm cov chav ua hauj lwm, txhua cov xov tseem ceeb uas suav pej xeeem uas lub Koos Haum tau nthuav tawm yuav tsum ua raws li tsab cai Census Act txwv tsis pub lwm tus pom raws li hais saum toj no. Ua li hais, thaum twg lub Koos Haum nthuav tawm cov ntaub ntawv suav pej xeeem, cov ntaub ntawv no yuav tsum tsis muaj dab tsi uas qhia tau tus tib neeg los yog qhia tau tsev neeg.³⁵

Thaum twg tsab cai Census Act tsis txhais “txoj kev suav pej xeeem,” lwm txoj kev cai uas yog tsoom fwm Meskas txoj cai txog kev tiv thaiv txwv tsis pub lwm tus pom yuav muaj feem cuam nrog rau txoj kev suav pej xeeem no – Tsab cai Confidential Information Protection thiab Statistical Efficiency Act (CIPSEA) – txhais txog kev suav pej xeeem “kev piav kom meej, kev kwv yees, los yog kev ntsuas cov kuj pwm ntawm tej pawg, yam qhia tsis tau cov tib neeg los yog cov koos haum uas muab cov pawg neeg no tso ua ne”³⁶ Piv txwv, yog tsis siv rau txoj kev suav pej xeeem “siv cov ntaub ntawv no yam qhia tau tus neeg yuav tsis yog siv los suav pej xeeem lawm, nrog rau txhua txoj kev.. tswj, kev ruaj ntseg ... los yog lub hom phiaj yuav muaj feem cuam nrog rau cov kev cai, cov kev muaj cai ua, los yog cov txiaj ntsim yog qhia tau hais tais tus neeg teb yog leej twg.”³⁷

Txawm li cas los, nws yog txoj cai rau lub Koos Haum Suav Pej Xeeem los tsim cov ntaub ntawv suav pej xeeem, piv txwv, kev suav cov neeg Mev-Latino rau lub tuam tsev tswj kev kawm ntawv los siv mus ntsuas cov kev kawm tau zoo thiab tau tsis zoo.³⁸ Tab sis yog hais tias lub Koos Haum yuav nthuav mus rau cov kws Tswj Ciam Teb thiab Tswj Kev Hla Teb Chaws kom ICE thiaj li txhob txwm mus tshawb cov neeg Mev-Latino

²⁸ *Relationship Between Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and Statutory Requirement for Confidentiality of Census Information*, Op. O.L.C. Supp. at 4 (1999), <https://www.justice.gov/opinion/file/844106/download>.
²⁹ *Id.* at 11.

31 *Id.* at 7 (“for more than sixty years, the Executive Branch has consistently employed a strong presumption that statutes affecting access to infor-
32 mation in general should not be construed to overcome the specific protections afforded to covered census information by the Census Act”).
33 13 U.S.C. § 9(a)(1) (Census Bureau may not “use the information furnished under the provisions of this title for any purpose other than the
34 statistical purposes for which it is supplied”).
35 U.S. Census Bureau, *Policy Cover Sheet of U.S. Census Bureau Privacy Principles 2* (Rev. 2009), https://www2.census.gov/foia/ds_policies/ds0pp.pdf (affirming that the Bureau will use census data “only for statistical purposes and will advise the public of these limited uses”).
36 13 U.S.C. § 8(b); *see also Seymour*, 559 F.2d at 809 (Census Bureau may release statistics “of a numerical nature, not names and addresses of spe-
37 cific individuals... a ‘tabulation’ is a computation to ascertain the total of a column of figures, or perhaps counting the names listed in a certain
38 group, rather than supplying the individual names and addresses”).
39 13 U.S.C. § 8(b); *Seymour*, 559 F.2d at 809.
40 CIPSEA § 502(9)(A), 44 U.S.C. § 3501, Note.
41 CIPSEA § 502(5)(A).
42 *See, e.g.*, U.S. Census Bureau, *Using Census Data to Help Local Communities: Census Information Centers at Work* 17–18, <https://www2.census.gov/library/publications/2003/comm/clo03-cic.pdf>.

thaum mus tshawb lawv, uas yog kev txhaum cai yam siv cov ntawv suav pej xeeem li no. Vim li no lub Koos Haum tau los lees hais tias lawv yuav “tsis nthuav cov neeg teb cov xov tseem ceeb txog lawv tus kheej rau tub ceev xwm tswj ciam teb xws li ICE; chav tub ceev xwm, xws li FBI los yog tub ceev xwm; los yog tso cai rau mus siv saib lawv puas tsim nyog tau txais kev pab los ntawm tsoom fwv.”³⁹

Txuas ntxiv, xws li cov ntaub ntawv txog tib neeg, kev suav pej xeeem kuj tsis pub siv “rau txoj kev puas tsuaj” ntawm cov tib neeg cov xov tseem ceeb uas yuav siv coj los suav pej xeeem.⁴⁰

Lub Koos Huam Suav Pej Xeeem tau ua raws nraim li kom muaj kev tiv thaiv cov ntaub ntawv suav pej xeeem. Lub Koos Haum txoj cai kom yog hais tias thov cov ntawv suav pej xeeem uas muab kho no “cov uas tsis pub neeg pom” thiab “cov neeg uas tsis pub neeg paub txog” yuav raug kev soj nstuam tshwj xeeb. Txhua txoj kev suav pej xeeem uas muaj cov xov yam tsis pub leej twg paub los yog muab cov neeg uas tsis pub leej twg pom, cov uas muaj kev cai tswj, los yog cov uas muaj kev tsis zoo rau lub Koom Haum Suav Pej Xeeem txoj kev ua zoo mas yuav tsum muaj kev pom zoo tshwj xeeb.⁴¹ Lub Koom Haum Suav Pej Xeeem tsis tas ua raws li hais yog muaj kev thov cov ntawv uas muab kho lawm, tab sis yuav tsum, yuav tsum qhia saib tus neeg thov yog leej twg, muab cov xov tseem ceeb qhov twg los, thiab hnuv twg yog hnuv nthuav cov xov.⁴²

Lwm cov Kev Tiv Thaiv Txog Kev Txwv Tsis Pub Leej Twg Pom Cov Lus Teb Kev Suav Pej Xeeem.

Lwm cov kev cai ua hauj lwm nrog rau tsab cai Census Act los tiv thaiv kev txwv tsis pub leej twg pov cov kev suav pej xeeem.

1. Tsab cai (Insert Hmong) The Confidential Information Protection and Statistical Efficiency Act. Thaum twg tsoom fwv Meskas los tswj cov ntaub ntawv khaws tau rau txoj kev suav pej xeeem yam tsis pub lwm tus pom nkaus xwb, CIPSEA,

xws li tsab cai Census Act, txwv tsoom fwv Meskas tsis pub siv cov ntaub ntawv dhau li txoj kev suav peej xeeem nkaus xwb.⁴³ Tsim tsa xyoo 2002, CIPSEA ntxiv nrog rau txoj kev txwv tsoom fwv los ntuav cov xov txwv tsis pub leej twg pom yam uas yuav qhia tau hais tias cov tib neeg yog leej twg vim tsis tau kev tso cai los ntawm cov tib neeg.⁴⁴

CIPSEA yeej hais meej hais tias kev tiv thaiv kom tsis pub leej twg pom raws li tsab cai Census Act muaj cai dua thiab txwv txoj kev nthuav cov xov uas CIPSEA kuj ntaus nqi tau kev tso cai los nthuav cov xov tseem ceeb.⁴⁵ Kev nthuav yam tsis tau kev tso cai yog txhaum txoj cai CIPSEA uas yog kev yuam cai uas muaj cai nplua nyiaj txog li ntawm \$250,000.⁴⁶

CIPSEA kuj yuav kom txhua lub koom haum uas yog tsoom fwv Meskas los khaws cov xov siv los suav pej xeeem cov hom phiaj yog nthuav tawm yam txwv tsis pub leej twg pom los ceev meej txog txoj kev siv cov xov uas khaws tau.⁴⁷ Lub Koos Haum Suav Pej Xeeem kev lees tsis pub leej twg pom, uas khi tau lub chav ua hauj lwm, uas hais tam sim no:

Lub koos haum The U.S. Census Bureau raug tswj los ntawm txoj cai los tiv thaiv koj cov xov tseem ceeb. Lub Koos Haum Suav Pej Xeeem tsis tau kev tso cai los nthuav koj cov lus teb tsis hais nthuav rau leej twg li. Raws li tsab cai Federal Cybersecurity Act ntawm xyoo 2015, koj cov xov yuav muaj kev tiv thaiv los ntawm saib kev ruaj ntseg hauv computer yam siv computer los txheeb koj cov xov tseem ceeb.⁴⁸

2. Tsab Cai The Privacy Act. Tsab Cai The Privacy Act, 5 U.S.C. §552a, ib yam li kev txwv tsoom fwv cov chav ua hauj lwm txoj kev nthuav tib neeg cov ntaub ntawv, tsis hais nthuav hom kev sib txuas lus twg, tsis hais tus tib neeg twg los yog tsoom fwv cov koos haum twg yam tsis muaj kev tso cai los ntawm cov tib neeg uas yog tus tswv ntawm cov ntawv.⁴⁹ Cov “ntaub ntawv” nrog rau “txhua yam, keeb kwm, los yog cov xov tseem ceeb sau ua ib pawg ceev los ntawm lub koos haum... thiab

³⁹ U.S. Census Bureau, *2020 Census Complete Count Committee Guide 3*, <https://www.census.gov/content/dam/Census/newsroom/press-kits/2018/ccc-guide-d-1280.pdf>.

⁴⁰ 13 U.S.C. § 8(c).

⁴¹ *Saib Policy on Providing Custom Tabulations and Custom Extracts Under 13 U.S.C. §8(b)*, Census Data Stewardship Program, DS-021 at 3 (2015), https://www2.census.gov/foia/ds_policies/ds021.pdf. A “custom tabulation” is a “statistical aggregation of confidential microdata collected

by the Census Bureau... from internal Census Bureau files that are not accessible by the public.” *Policy on Providing Custom Tabulations and Custom Extracts Under 13 U.S.C. §8(b)* at 1. A “custom extract” is “a statistical aggregation or reorganization of nonconfidential Census Bureau data, that is... developed from published and previously published tables or from unpublished data that has been cleared for disclosure avoidance.” *Id.* at 2.

42 *Id.* See also *Custom Tabulations*, United States Census Bureau, https://www.census.gov/about/policies/foia/foia_library/custom_tabulations.html.
43 CIPSEA § 512(a).

44 44 CIPSEA §

512(b)(1).

45 CIPSEA § 504(c) (CIPSEA “shall not be construed as authorizing the disclosure for nonstatistical purposes of demographic data or information collected by the Census Bureau pursuant to [the Census Act]”); *see also* Census Bureau, DS007: *Safeguarding and Managing Information* 5 (2009), https://www2.census.gov/foia/ds_policies/ds007.pdf (“All information collected on behalf of another federal agency, under the authority of CIPSEA, should be treated as Title 13 information”).

46 CIPSEA § 513.

47 CIPSEA § 512.

48 82 Fed. Reg. 31,553.

49 5 U.S.C. § 552a(b). The Privacy Act protects the records of U.S. citizens and lawful permanent residents only. 5 U.S.C. § 552a(a)(2).

Muaj lawv lub npe, los yog tus zauv qhia tau lawv yog leej twg, cov cim, los yog lwm cov kev qhia tau.⁵⁰ Lub Koos Haum Suav Pej Xeem cim tau cov ntawv suav pej xeem yam muaj kev tiv thaiv los ntawm tsab cai Privacy Act.⁵¹

Yog hais tias lub Koos Haum nthuav tib neeg cov xov txog kev suav pej xeem thiab kev nthuav muaj “kev puas tsuaj” rau tus tib neeg, tsab cai Privacy Act tso cai rau tus tib neeg tuaj foob yuav nyiaj hauv tsoom fwm lub tsev hais plaub loj.⁵² Thiab tsoom fwm cov neeg ua hauj lwm txhob txwm nthuav cov xov kev suav pej xeem yam yuam tsab cai Privacy Act kuj nplua nyiaj txog \$5,000.⁵³

3. Tsab cai ua se (The Tax Code) Lub Koos Haum Suav Pej Xeem tej thaum siv cov ntaub ntawv ua se los ntawm tuam tsev Internal Revenue Service Los pab suav pej xeem kom thwj tshaj.⁵⁴ Nyob ntawm Title 26 ntawm United States Code, cov ntawv ua se yog yam txwv tsis pub lwm tus pom, thiab nws txhaum kev cai rau tsoom fwm los nthuav cov ntaub

ntawv ua se.⁵⁵ Cov kev tiv thaiv no yeej muaj kev tiv thaiv thaum twg yog siv cov ntawv ua se xyaw nrog lwm cov ntaub ntawv, nrog rau kev suav pej xeem.⁵⁶ Yog hais tias tsoom fwm nthuav tib neeg cov ntawv ua se yuav txhaum tsab cai Title 26, tus tib neeg ntawv muaj cai foob kom tau nyiaj.⁵⁷

Koom nrog rau tsab cai Census Act txoj kev tiv thaiv txwv tsis pub leej twg pom, cov kev cai yuav haj yam pab ua kom, tib neeg cov ntawv suav pej xeem tsis txhob raug nthuav rau pej xeem pom.

Muab ua ib los lus hais, tsoom fwm txoj cai yeej txwv meej rau lub Koos Haum Suav Pej Xeem kom txhob nthuav cov ntawv kev suav pej xeem rau txoj kev uas yuav qhia tau saib lawv yog leej twg, nrog rau tsoom fwm lwm cov koos haum. Txuas ntxiv, tib neeg cov lus teb yuav siv tsis tau ua lwm yam uas yam tsis yog coj mus suav pej xeem xws li tswj ciam teb los yog tub ceev xwm. Cov kev tiv thaiv uas qhia meej tsim los tiv thaiv cov kev yuav siv cov ntaub ntawv yam tsis raws kev cai.

50 5 U.S.C. § 552a(a)(4).

51 See *Privacy Act Requests*, U.S. Census Bureau, https://www.census.gov/about/policies/foia/privacy_act_requests.html.

52 5 U.S.C. § 552a(g). A Privacy Act plaintiff may also seek attorneys' fees. *Id.*

53 5 U.S.C. § 552a(i).

54 26 U.S.C. § 6103(j)(1)(A) (“Upon request in writing by the Secretary of Commerce, the Secretary [of the Treasury] shall furnish such returns, or return information reflected thereon, to officer and employees of the Bureau of the Census”); see also Census Bureau, *Agreement for the Review and Approval of U.S. Census Bureau Projects that Use Federal Tax Information* 4 (2012), https://www.census.gov/ces/pdf/IRS_Criteria_Document.pdf.

55 26 U.S.C. § 6103(a)(1).

56 See Census Bureau, DS007: *Safeguarding and Managing Information* 5 (2009), https://www2.census.gov/foia/ds_policies/ds007.pdf (confidentiality applies to “[a]ny dataset that is commingled with data that is protected by Title 26”).

57 26 U.S.C. § 7431(a)(1). Victorious plaintiffs are entitled to (1) “the greater of” \$1,000 in statutory damages for each act of wrongful inspection or disclosure and the “sum of” actual damages and punitive damages, (2) the costs of their action, and (3) attorneys’ fees. 26 U.S.C. § 7431(c).

Hais txog chav Brennan Center rau txoj Kev Ncaj Ncees

Chav Brennan Center for Justice ntawm NYU School of Law yog lub tuam tsev qhia kev cai thiab tsim kev cai los tshawb kom muaj kev ncaj ncees thiab ruaj ntseg. Peb ua hauj lwm koj peb cov tuam tsev tsim kev cai thiab cov kev cai muaj feem cuam nrog rau Meskas lub zeem muag ntawm txoj kev ywj pheej thiab muaj vaj huam sib luag rau txhua tus. Lub Chav ua hauj lwm dav nrog rau kev cai pov npav mus nrhiav nyiaj kev ua nom, rhuav tshem kev kaw ntau tus tib neeg mus rau kev tswj txoj cai Constitutional los tiv thaiv txoj kev puas tsuaj rau teb chaws. Ib feem ntawm cov kev xav, ib feem ntawv kev sawv cev, ib feem ntawv kev sib txuas lus, peb pib siv zog tshawb fawb heev. Peb tsim kev cai tshiab. Thiab peb pab lawv tawm tsam — hauv tsoom fwm Congress thiab cov xeev, cov tsev hais plaub, thiab cov tsev hais plaub cov kev xav rau pej xeem.