

“Social justice should be the underlying goal of all humanity.”

-Alan V. Lowenstein, Institute Founder



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do social justice.

August 2, 2018

Ms. Jennifer Jessup
Departmental Paperwork Clearance Officer
U.S. Department of Commerce
Room 6616
14th and Constitution Ave, NW
Washington, DC 20230

Submitted via <http://www.regulations.gov>

Re: Comments on Proposed Information Collection on 2020 Census,
Docket ID: USBC-2018-0005

Dear Ms. Jessup:

On behalf of the New Jersey Institute for Social Justice (the “Institute”), I write to strongly urge the U.S. Department of Commerce to remove the citizenship question from the 2020 Census form. The addition of a citizenship question will jeopardize the accuracy of the count and further exacerbate the existing difficulties in reaching hard-to-count populations, including people of color and immigrant communities, while providing no identifiable benefit.

The Institute is a legal advocacy organization that works to ensure that urban residents live in a society that respects their humanity, provides equality of economic opportunity, empowers them to use their voice in the political process, and protects equal justice. An accurate decennial census count is vital to the Institute’s work to guarantee equal political representation for urban residents and to ensure they can meet their economic needs.

An accurate census count is a constitutional mandate.¹ Further, it has been long settled that the “actual Enumeration” clause requires a count of *every* person in the United States—there are no exceptions.²

Beyond the legal requirement to count every person, Census data are vital in determining allocation of political representation and drawing legislative districts and directing much-needed federal funding to states, localities, and families. The decennial census count is a once-in-a-decade occurrence.

¹ U.S. CONST. art. I, § 2, cl. 3.

² *Id.*; Fed’n for Am. Immigration Reform v. Klutznick, 486 F. Supp. 564, 576 (D.D.C. 1980) (“The language of the Constitution is not ambiguous. It requires the counting of the ‘whole number of persons’ for apportionment purposes, and . . . illegal aliens . . . are clearly ‘persons.’”).

There are no do-overs; the results will impact our communities for the next ten years.

Any census changes that may discourage participation must be understood against the backdrop of an *already* disquieting undercount of people of color and foreign-born individuals.³ More than 1.5 million people of color went uncounted nationwide in the 2010 census,⁴ including an estimated 2.06% net undercount of the Black population and a 1.54% net undercount of the Latino population.⁵

Approximately 22% of New Jersey's total population currently live in so-called "hard-to-count" (HTC) areas.⁶ New Jersey is one of the most racially segregated states in the nation⁷ and people of color are significantly more likely to live in HTC areas than white people. Fifty-one percent of the state's Black population,⁸ 40% of its Latino population,⁹ and 21% of its Asian population¹⁰ live in HTC areas, as compared to only 13% of white New Jerseyans.¹¹ Further, 22.5% of New Jersey's population is foreign-born, and in 2014 nearly one-in-four immigrants in the state was undocumented.¹²

When already-marginalized communities go unrepresented in the census, they go unrepresented in the government as a whole. They lose representatives in the legislature,¹³ life-sustaining federal funds like Medicaid and Supplemental Nutrition Assistance Program (SNAP),¹⁴ and visibility in research that relies on census data to measure racial and gender inequities.¹⁵

³ CTR. FOR URBAN RESEARCH, CITY UNIV. OF N.Y. (CUNY), HTC 2020: MAPPING HARD TO COUNT (HTC) COMMUNITIES FOR A FAIR & ACCURATE 2020 CENSUS (2017), <https://www.censushardtocomcountmaps2020.us>.

⁴ *2010 Census Missed 1.5 Million Minorities*, CBS NEWS (May 22, 2012, 9:25 PM), <https://www.cbsnews.com/news/2010-census-missed-15-million-minorities/>.

⁵ Decennial Statistical Studies Div., U.S. Census Bureau, Census Coverage Measurement Estimation Report 16 (2012), https://www.census.gov/coverage_measurement/pdfs/g01.pdf (showing data for Black-alone-or-in-combination with one or more races and Hispanic Origin).

⁶ Plaintiffs' Complaint for Declaratory and Injunctive Relief at 29-30, *New York v. United States Dep't of Commerce*, No. 1:18-cv-02921 (S.D.N.Y. Apr. 3, 2018) (hereafter "States' Complaint").

⁷ See ANTI-POVERTY NETWORK OF N. J., *THE UNCOMFORTABLE TRUTH: RACISM, INJUSTICE, AND POVERTY IN NEW JERSEY 12-14* (2017), <http://www.antipovertynetwork.org/resources/Documents/The%20Uncomfortable%20Truth%20Final%20%20web.pdf>.

⁸ ADVOCATES FOR CHILDREN OF NEW JERSEY ("ACNJ"), *BLACK/AFRICAN AMERICAN POPULATION AT GREATEST RISK FOR UNDERCOUNT IN NEW JERSEY* (2018) (on file with author).

⁹ ACNJ, *HISPANIC/LATINX POPULATION AT GREATEST RISK FOR UNDERCOUNT IN NEW JERSEY* (2018) (on file with author).

¹⁰ ACNJ, *ASIAN POPULATION AT GREATEST RISK FOR UNDERCOUNT IN NEW JERSEY* (2018) (on file with author).

¹¹ U.S. CENSUS BUREAU, *2010 CENSUS PARTICIPATION RATES, NEW JERSEY*, <https://www.census.gov/cgi-bin/census2010/staterates.cgi>; U.S. CENSUS BUREAU, *2016 AMERICAN COMMUNITY SURVEY FIVE-YEAR ESTIMATES, NEW JERSEY*, <https://www.census.gov/acs/www/data/data-tables-and-tools/data-profiles/2016/> (calculations and analysis by ACNJ) (on file with author).

¹² States' Complaint, *supra* note 6, at 29-30.

¹³ Alicia Parlapiano, *Are You a U.S. Citizen? How a 2020 Census Question Could Affect States*, N.Y. TIMES (Apr. 3, 2018), <https://www.nytimes.com/interactive/2018/03/30/us/impact-of-citizenship-question-on-census.html>.

¹⁴ Plaintiffs' Complaint at 62-63, *New York Immigration Coalition v. United States Dep't of Commerce*, No. 1:18-cv-05025 (S.D.N.Y. June 6, 2018) (hereafter "ACLU Complaint").

¹⁵ Kate Wheeling, *Why a Census Undercount Spells Trouble for Social Scientists*, PACIFIC STANDARD (Mar. 28, 2018), <https://psmag.com/news/why-a-census-undercount-spells-trouble-for-social-scientists>.

In the current political climate in which immigrants—both documented and undocumented—are demonized and their families torn apart, adding a request for citizenship status will cause participation to plummet even further. Indeed, the Census Bureau’s own research showed a sharp uptick in fear and a decrease in response rates in immigrant communities of color, even before the addition of a citizenship question.

In September 2017—several months *before* the addition of a citizenship question was announced—the Census Bureau’s Center for Survey Measurement (CSM) expressed concern of increased nonresponses in HTC populations in the 2020 Census resulting from a “new phenomenon” of fear due to “the ‘Muslim ban,’ discomfort ‘registering’ other household members by reporting their demographic characteristics, . . . [and] repeated references to Immigration and Customs Enforcement (ICE) . . .”¹⁶ The CSM found nearly 27% of pretest interviewees in the DC-metro area intentionally provided incomplete or inaccurate information about household members due to fear stemming from confidentiality and “perceived negative attitudes towards immigrants.”¹⁷ The CSM noted that such deliberate falsification and fear was “largely unprecedented”: even interviewees who had previously taken part in CSM projects were “visibly nervous and reticent,” though they had not been uncomfortable before.¹⁸ This is particularly concerning given that pretest interviewees are typically *more* willing to fill out the survey than decennial census respondents, because they are paid for participating and are interviewed by researchers recruited through trusted community organizations.¹⁹

The Census Bureau conducted further research through spring 2018, and it concluded “[n]on-response, fear, and law enforcement activities [*i.e.*, immigration raids or deportation] were salient in many focus groups.”²⁰ In fact, 55% of focus groups and 48% of interviewees feared the census and its confidentiality; 29% of focus groups and 34% of interviewees expressed concern regarding deportation or immigration raids; 34% of interviewees worried their census data would be shared with ICE or other federal agencies; and 60% of focus groups said they left a question blank or would not respond to a question in the decennial census because they were concerned about confidentiality.²¹ If these forecasts bear out, immigrant communities of color will be markedly undercounted in the 2020 Census—even more so than they were in the 2010 Census.²²

¹⁶ Memorandum from Ctr. for Survey Mgmt. to Assoc. Dir. for Research and Methodology 1 (Sept. 20, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 3.

¹⁹ MIKELYN MEYERS, CTR. FOR SURVEY MGMT., RESPONDENT CONFIDENTIALITY CONCERNS AND POSSIBLE EFFECTS ON RESPONSE RATES AND DATA QUALITY FOR THE 2020 CENSUS 6 (2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf>.

²⁰ MIKELYN MEYERS & PATRICIA GOERMAN, U.S. CENSUS BUREAU, RESPONDENT CONFIDENTIALITY CONCERNS IN MULTILINGUAL PRETESTING STUDIES AND POSSIBLE EFFECTS ON RESPONSE RATES AND DATA QUALITY FOR THE 2020 CENSUS 9-13 (2018), <https://www.census.gov/content/dam/Census/newsroom/press-kits/2018/aapor/aapor-presentation-confidentiality.pdf>.

²¹ *Id.*

²² *Id.* at 2.

The Bureau took only *four months* to consider the addition of the entirely new citizenship question.²³ It conducted no research on its impact on response rates.²⁴ It did not test its impact on data accuracy.²⁵ Indeed, six former directors of the Census Bureau warned that “adding an untested question on citizenship status at this late point in the decennial planning process would put the accuracy of the enumeration and success of the census in all communities at grave risk.”²⁶

Comparatively, preparation for the 2010 Census began thirteen years in advance.²⁷ For 2020, the Census Bureau spent ten years developing and testing *one* proposed question change. The Bureau spent four years researching whether the change would improve respondent understanding of the question or response accuracy, and the next several years weighing language, layout, and instructions options.²⁸

For these reasons, addition of a citizenship question has drawn intense opposition from a broad array of stakeholders, including 60 members of Congress; 161 Democratic and Republican mayors; 2 former Commerce Secretaries and 6 former Census directors who served in Republican and Democratic administrations; 19 attorneys general; the scientific and statistical community; and business leaders from across the country.²⁹

Not only will this question produce an undercount, it will come with no identifiable benefit. Secretary Ross’s purported justification is that collecting citizenship information on every person is necessary to enforce the Voting Rights Act (VRA). However, individual-level citizenship data has never been—and is still not—needed to enforce the VRA.³⁰ In fact, the last time a citizenship question was included in the decennial census was 1950, fifteen years before passage of the VRA.³¹ Furthermore, nineteen state attorneys general and the governor of Colorado,³² the Leadership Conference on Civil and Human Rights, a coalition of 170 civil rights

²³ *Id.* at 17.

²⁴ *Id.*

²⁵ *Id.* at 19-20.

²⁶ Letter from Vincent P. Barabba et al., Former Dir., U.S. Census Bureau, to Wilbur Ross, U.S. Sec’y of Commerce (Jan. 26, 2018), https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf?tid=a_mcntx.

²⁷ *Progress Report on the 2020 Census: Hearing Before the U.S. H. of Reps. Comm. on Oversight & Gov’t Reform*, 115th Cong. 8 (2018) (statement of Justin Levitt, Professor, Loyola Law School), <https://oversight.house.gov/wp-content/uploads/2018/05/Levitt-Testimony-2020-Census-Hearing-05082018.pdf> (hereafter “Levitt Testimony”).

²⁸ States’ Complaint, *supra* note 6, at 16-17.

²⁹ See ASIAN AMS. ADVANCING JUSTICE AAJC, FACTSHEET ON ADDITION OF CITIZENSHIP QUESTION TO 2020 CENSUS FORM 2 (2018), <https://www.advancingjustice-aajc.org/sites/default/files/2018-04/AAJC%20Factsheet%20on%20Citizenship%20Question%20and%20Census%20REVISED%20April%202018.pdf>.

³⁰ See Levitt Testimony, *supra* note 27, at 13-20.

³¹ *Id.* at 6.

³² Letter from Eric T. Schneiderman et al., State Attorneys Gen., to Wilbur Ross, U.S. Sec’y of Commerce (Feb. 12, 2018), <https://www.brennancenter.org/sites/default/files/legal-work/Multi-State-Attorney-General-Letter-re-2020-Census.pdf>.

organizations;³³ and numerous other civil and voting rights advocates have all stated a citizenship question will undermine, not help, VRA efforts.

Moreover, it has become increasingly clear in the months since Secretary Ross's announcement that VRA enforcement was simply a pretext. Emails that have come to light through litigation challenging the decision show that the Administration was interested in adding a citizenship question long before the Department of Justice formally requested it.³⁴ Indeed, it appears the Commerce Department actively solicited the Justice Department's request.³⁵ This timeline, along with indications that the question was actually added at the request of political operatives,³⁶ further undermines the purported justification for adding the citizenship question and raises grave concerns about politicization of the census.

Consequently, the Institute strongly urges removal of the citizenship question from the 2020 Census. If you have any questions or would like any additional information, please contact Scott Novakowski, Associate Counsel, by phone at (973) 624-9400, ext. 30, or by email at snovakowski@njisj.org.

Sincerely,



Scott Novakowski
Associate Counsel

Ryan P. Haygood
President & CEO

³³ Letter from the Leadership Conference on Civil and Human Rights to Wilbur Ross, U.S. Sec'y of Commerce (Jan. 10, 2018), <http://civilrightsdocs.info/pdf/policy/letters/2018/doj-citizenship-q-proposal-FINAL.pdf>.

³⁴ Tara Bahrapour, *Wilbur Ross Actively Pushed to Add Citizenship Question to 2020 Census, Documents Show*, WASH. POST (July 24, 2018), https://www.washingtonpost.com/local/social-issues/wilbur-ross-actively-pushed-to-add-citizenship-question-to-2020-census-documents-show/2018/07/24/5601b3b6-8f65-11e8-bcd5-9d911c784c38_story.html?utm_term=.42ed94050979.

³⁵ *Id.*

³⁶ Liz Robbins & Katie Benner, *Documents Show Political Lobbying in Census Question About Citizenship*, N.Y. TIMES (June 9, 2018), <https://www.nytimes.com/2018/06/09/nyregion/kobach-bannon-lobbying-census-question-on-citizenship-documents.html>.