LEAGUE *of* UNITED LATIN AMERICAN CITIZENS

Democracy Defenders Fund

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SUBJECT: Comment of League of United Latin American Citizens in response to Notice of Proposed Rulemaking, titled "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions" (Docket No. 260903-0005).

On behalf of the League of United Latin American Citizens ("LULAC"), Democracy Defenders Fund submits this comment in response to the Census Bureau, U.S. Department of Commerce's ("the Bureau") Notice of Proposed Rulemaking ("the Proposed Rule") to oppose implementation of any rule that would (1) change the definition of "usual residence" for purposes of removing undocumented and other noncitizen persons from decennial population counts and add a citizenship question to census forms, and (2) deprive census respondents of the option of selecting their own race and ethnicity on census forms. As detailed below, this two-part proposal contravenes longstanding American law, constitutional and statutory; breaks from historical practice; and would harm communities, citizen and noncitizen alike, across the country. The Proposed Rule has no legal basis, cannot be practically implemented, and would be deeply harmful to the well-being of the people of the United States.



LEAGUE *of* UNITED LATIN AMERICAN CITIZENS



I. Interest of League of United Latin American Citizens

Founded in 1929, the League of United Latin American Citizens is the nation's oldest and largest Latino civil rights organization. With over 600,000 members and over 435 local councils across the United States and Puerto Rico, LULAC has worked for nearly a century to expand opportunities for Latino families and communities, whatever their citizenship status. LULAC believes every person in this country deserves a chance to build a stable life, without unnecessary barriers or discrimination.

LULAC's experience with, and work related to, the 2010 and 2020 Censuses shows exactly why its voice matters here. During the 2020 Census, LULAC warned that fear of federal authorities, concerns about confidentiality, and reduced outreach would keep Latino households from participating. The 2020 Census results reinforced those concerns. According to the Bureau, the Latino undercount increased from 1.54% in 2010 to 4.99% in 2020, leaving over three million Latinos uncounted on a net basis. Texas, for example, experienced a statewide undercount of 1.92%, while young children were significantly undercounted in California, Texas, and Arizona. As then-Director Santos noted, the pandemic left many immigrants wary of opening their doors to census takers. Additionally, President Trump's failed attempts to illegally include a citizenship question in the census form and remove undocumented persons from census counts, which LULAC publicly condemned, prompted fear within the Latino community, leaving citizens and noncitizens wary of completing forms and answering door knocks.

If the Bureau takes the administration's previous attempts one step further–and changes the definition of "usual residence" in order to remove millions of noncitizens from the apportionment base, adds a citizenship question to the census form, and stops collecting race and ethnicity data, it will reduce participation even further. Combined, these actions would result in severe undercounts, even worse than those from 2020. LULAC's councils work in communities, and encourage census participation, where inaccurate counts result in fewer federal dollars and thus fewer resources for schools, healthcare, housing, and other essential services. If the Bureau makes these proposed changes, all these essential services will deteriorate. And the consequences will extend far beyond Latino communities, directly impacting every American, regardless of race or ethnicity, who lives in a community with a significant immigrant population. No amount of LULAC's census engagement work can mitigate these foreseeable impacts.

II. Summary of the Proposed Rule

Since 1790, the Bureau has conducted a decennial enumeration of all "persons" within the United States, regardless of citizenship status or immigration status, counting each person at their "usual residences" at the time of the census. The Bureau uses these numbers to apportion seats in the U.S. House of Representatives, draw district lines, and allocate federal funding for the next decade. Accurate counts are therefore essential to ensuring equal representation, compliance with civil-rights protections, and the equitable distribution of federal resources.

Even though the Constitution and longstanding federal law require the Census to count "the whole number of persons in each State"—not merely citizens, legal residents, or eligible voters—the Bureau now seeks to redefine "usual residence" and add a citizenship question to exclude undocumented persons and certain visa holders from the decennial count on grounds that "they are not true inhabitants, members of the body politic, or persons with a 'usual residence' in the U.S. due to their lack of a sufficient tie and allegiance to the United States."[1] It further attempts to "prohibit the inclusion of questions about race and ethnicity" on the census form, claiming that collection of such data does not advance the "fundamental, Constitutional purpose" of the census, compromises privacy, and runs afoul of "colorblind" categorizations.[2] However, neither justification is legally nor factually supported.

Regarding the first proposal, the Bureau cannot redefine "usual residence" to exclude undocumented individuals and other noncitizens from apportionment. The Constitution requires the decennial census to count all "persons," not merely citizens, for purposes of congressional apportionment. Consistent with this mandate, the Census Act of 1790 established "usual residence"—"the place where a person lives and sleeps most of the time"—as the governing standard for determining where individuals are counted, a principle maintained in every subsequent census.[3] Neither the duration of an individual's residence nor the demonstration of particular ties or allegiance to the United States has ever been a prerequisite for inclusion in the Census.[4] The Bureau has accordingly distinguished between foreign nationals residing in the

[1] *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions*, 91 Fed. Reg. 57,524, 57,526.
[2] *Id.* at 57,527
[3] As the Bureau itself has recognized, the "Census Act of 1790 established the concept of 'usual residence' as the main principle in determining where people should be counted, and this concept has been followed in all subsequent censuses. 'Usual residence' has been defined as the place where a person lives and sleeps most of the time."
[4] Moreover, a vast majority of undocumented immigrants already have significant ties to the United States. Approximately 80% of undocumented immigrants have lived in the country for five years or more; and most have jobs here, have families here, have raised their children here, and have paid significant taxes here, regularly contributing to the communities and states in which they live.

United States, who are included in the census count, and temporary visitors who are present only for travel or vacation, who are therefore excluded from the count.

While the Bureau may consider ties to a state for purposes of determining where an individual is counted, *not whether an individual is counted* (see discussion of *Franklin*, infra), no person need demonstrate certain ties or allegiances in order to be counted. Nor does the Bureau enjoy "virtually unlimited discretion," as it so claims, to make proposed changes on the definition of residence to remove noncitizens from counts. That language comes from *Wisconsin v. City of New York*, 517 U.S. 1 (1996), a case in which the Court found it was reasonable for the Bureau to decline using a statistical adjustment to correct an undercount in order to achieve "actual enumeration." It did not address whether the Bureau could change definitions or practices for the purpose of *removing* persons from apportionment bases. Indeed, the Bureau may not make such a change here, for doing so would deviate both from constitutional requirements to count persons and from relevant federal statutory law, including the Census Act and the APA. To be sure, nothing in either *Wisconsin* or *Franklin*–two cases on which the Bureau heavily relies for its contention that it may change the "usual residence" definition–addresses whether to count persons in apportionment bases, but rather *how* or *where* to count them.

Regarding the second proposal, the Bureau contends that collecting race and ethnicity data does not advance the census's "fundamental, Constitutional purpose," raises privacy concerns, and perpetuates demographic classifications about which it expresses "substantial doubts." These justifications are unfounded. The Bureau already collects other demographic information, including sex and date of birth, that does not independently advance the census's constitutional purpose, yet their inclusion remains unchallenged. Moreover, the Constitution does not prohibit the collection of race and ethnicity data, and Public Law 94-171 expressly requires the Bureau to provide states with geographic and demographic data, including race and ethnicity, for redistricting purposes. Without this data, states may be unable to satisfy their obligations under the Voting Rights Act, undermining the creation of fair district maps and equal political representation.

The Bureau's privacy rationale is similarly unpersuasive, particularly given its selective objection to race and ethnicity data while retaining other identifying demographic information, including names, ages, dates of birth, and telephone numbers. Its proposal to eliminate these particular categories, coupled with its stated preference for a census process that is "colorblind," suggests an effort to disregard demographic distinctions that remain essential to identifying and remedying unlawful discrimination. The Bureau should therefore continue collecting race and ethnicity data to fulfill its statutory obligations to support the enforcement of civil rights protections. Further, the proposal's increased reliance on administrative records over individuals' direct responses would

compromise privacy, diminish census accuracy, and fail to provide the demographic information required under Public Law 94-171.

Taken together, these proposed changes would violate the Constitution and federal statutory requirements, constitute arbitrary and capricious agency action under the Administrative Procedure Act, produce substantial census undercounts, dilute the voting strength and representation of immigrant and Latino communities, and jeopardize the equitable distribution of federal funding for essential public services. If implemented, the Proposed Rule would adversely affect all individuals residing in the United States, regardless of citizenship status, and undermine the interests of the whole nation. Accordingly, LULAC strongly urges the Bureau—a nonpartisan agency with a longstanding commitment to accurate enumeration—to reject the proposed rule, adhere to the established legal requirement to count all "persons" for apportionment purposes, and continue allowing individuals in all households to self-identify their race and ethnicity on census forms.

III. The Bureau's proposal to redefine "usual residence"–and thereby remove noncitizens from the apportionment base–has no basis in law and runs counter to the country's history of including immigrants, whether citizen or noncitizen, in the decennial Census.

The Bureau's proposed rule to redefine "usual residence" for purposes of excluding millions of persons living in America from apportionment breaks from longstanding law, constitutional and statutory, and from this agency's historical practice and commitment to fair, accurate counts.[5]

Indeed, if the agency adopts the Proposed Rule, the courts will almost certainly strike it down because the Bureau's aim, through redefining "usual residence," is to identify noncitizens for the very purpose of removing them from the apportionment base. Excluding people from the census on account of citizenship status would contravene the Constitution and the Census Act. And because such a rule has no reasonable basis and would violate the Constitution's requirement to count all "persons," it is also arbitrary and capricious under the APA.

In its "supplementary information" statement, the Bureau glosses over the Constitution's requirement to count "whole persons"–incorrectly stating that it must "count qualifying persons"–and instead focuses on the phrase, "usual residence," claiming that undocumented persons and

[5] Ariel G. Ruiz Soto, Julia Gelatt & Jennifer Van Hook, *Following Years of High Border Arrivals, the U.S. Unauthorized Immigrant Population Hits New Peak*, Migration Policy Inst. (July 29, 2026) (estimating that approximately 15.8 million unauthorized immigrants resided in the United States as of mid-2024); U.S. Census Bureau, *2024 American Community Survey 1-Year Estimates, Table K200501: Citizenship Status in the United States* (2024) (reporting approximately 24.4 million noncitizens residing in the United States).

temporary visa holders are not "true inhabitants" due to "lack of a sufficient tie and allegiance to the United States." But "usual residence" does not mean "legal residence," and it never has. If it did, large numbers of noncitizens *and citizens* (such as uniformed and overseas citizens) would be removed from apportionment bases. While it might make sense, for example, to exclude from the decennial census foreign-born visitors who are in the United States on vacation or for a temporary stay, it makes little sense to exclude people who have moved to the United States with the intention of making it their permanent home.

A. The Bureau cannot change the definition of "usual residence" if doing so would enable it to otherwise contravene its constitutional and federal statutory obligation to count "persons" where they live.

At the outset, it is important to recognize that the Bureau's stated reason for proposing to change the "usual residence" rule is to exclude undocumented immigrants and other visa holders from apportionment based on what the Bureau characterizes as their "lack of a sufficient tie and allegiance to the United States." But the Bureau has no authority to redefine "usual residence" to advance an unconstitutional objective. The Constitution has always required the enumeration of all "persons," not merely those whom the government deems sufficiently tied or loyal to the United States.

Courts, prior administrations of the Department of Justice, and the Bureau itself have consistently interpreted "usual residence" to include all "persons" residing in a state (or the relevant district) where they "live and sleep most of the time." At no point have any of these authorities conditioned inclusion in the census on an individual's ability to demonstrate a "sufficient tie and allegiance to the United States." Such a requirement would not only contravene the plain language of the Constitution, the Census Act, and the Bureau's own policies, but would also be impossible to implement.

While no court to date has supplied a legal definition of "usual residence," none has *ever* held that legal status or allegiance is part of it. The term "usual residence" was first used in the 1790 Census Act, which clarified that persons should be counted at their "usual place of abode" or where they "usually live" in each state. Census Act of 1790, 1 Stat. 101 (1790). It was not until 1992, nearly two hundred years later, that this phrase garnered much attention. In *Franklin v. Massachusetts*, 505 U.S. 788 (1992), a case on which the Bureau relies for its proposed change to the definition, the Supreme Court reversed a lower court's decision requiring the Bureau to remove from a specific state's apportionment base overseas military personnel who were temporarily abroad. The Court found that "'usual residence' … continued to hold broad connotations" (*Id*. at 805) and that the overseas personnel had "retained their ties to their states," thereby allowing for their inclusion

in those apportionment bases (*Id*. at 806)(citing *Dept. of Commerce v. Mont*., at 503 U.S., 459, in which the Court found that "[t]he term [usual residence] *can* mean more than mere physical presence, and has been used broadly enough to include *some* element of allegiance or enduring tie to a place")(emphasis added).

The Bureau's reliance on this case is misguided for several reasons. First, the question before the Court was not whether the Bureau should count these overseas personnel in the census counts but *where*. These individuals, by virtue of having otherwise resided in Massachusetts when not abroad, had sufficiently demonstrated ties to that state. Second, contrary to the Bureau's suggestion, the Court did not impose any requirement that a person demonstrate "a sufficient tie and allegiance to the United States" to be counted in a state's apportionment base. Rather, given the "broad connotations" associated with "usual residence," the Court held that the Bureau's decision to count individuals in their respective home states was "consonant with … the text and history of the Constitution" and, further, that "many federal employees temporarily stationed overseas had retained their ties to the States, and could and should be counted toward their States' representation in Congress." *Id.* at 806. By counting these individuals and including them in the states where they lived, the Bureau fulfilled its constitutional obligation to enumerate persons at their "usual residences."

Third, because the individuals at issue were temporarily absent from their homes, or "usual residences," the Court had to determine which state should count them. Establishing their connection to a particular state was therefore necessary to resolve that question. But here, the persons at issue–millions of foreign-born individuals now living in the United States–are in fact physically living in their "usual residences" within the U.S. That very act by necessity demonstrates ties to the states in which their "usual residences" are located. Whereas *Franklin* addressed where to count people who were *away*, it said nothing of persons who are already *here*. The Bureau, if it's to follow constitutional and federal statutory law, including the mandate that it count "persons" (see below) in the states where they live, must count and apportion them based on where they regularly live and stay, i.e., the homes they report on their forms.

Moreover, imposing a requirement that individuals demonstrate such "ties and allegiances" before being counted in the states and districts where they reside would be both impractical and fundamentally inconsistent with the constitutional mandate to enumerate persons. How, for example, would the Bureau apply such a requirement to children? Or to individuals generally? Would it require an oath of allegiance as a condition of enumeration—an extraordinary requirement that could itself raise serious First Amendment concerns? The Bureau's rationale also proves internally inconsistent. DACA recipients and individuals with Temporary Protected Status

(TPS), particularly those raising U.S.-citizen children may have as many, if not more, enduring ties to their communities, states, and country as recently arrived lawful permanent residents.

B. The Constitution requires, and has always required, the Bureau to count all persons, citizen and noncitizen, living in each state for purposes of apportionment.

No matter the Bureau's aim and intent, it cannot effectuate the first part of the Proposed Rule–changing the "usual residence" rule to remove undocumented persons and other visa holders from the counts–because the Constitution, at its inception, has always required the Bureau to count "persons," irrespective of legal status.

As modified by the Fourteenth Amendment, the Constitution's Enumeration Clause confers upon Congress the responsibility to conduct an "actual Enumeration" of the "whole number of persons in each State." U.S. Const. art. I, § 2, cl. 3 & amend. XIV, § 2. These constitutional requirements, reinforced by the Census Act, require the decennial census to accurately count the "whole number of persons" in each state and to safeguard the process from politicization. *See Franklin*, 505 U.S. at 819–20 (1992) (Stevens, J., concurring in part and concurring in the judgment) (noting that 2 U.S.C. § 2a(a), the apportionment statute, "embodies a duty to conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment"). Practices that undermine "actual enumeration are prohibited" *See, e.g., Dep't of Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999) (concluding that § 195 of the Census Act prohibits the use of sampling in the decennial census).

1. From the founding, the Constitution has required congressional apportionment to include all persons regardless of citizenship or voter eligibility.

To ensure "the foundations of this government … be laid on the broad basis of the people," 4 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 21 (Jonathan Elliot ed., 1836), the Framers stipulated that U.S. House representatives "be apportioned among the several States … according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, . . . and excluding Indians not taxed, three fifths of all other Persons." U.S. Const. art. I, § 2, cl. 1, 3.

Although the Framers refused to count enslaved persons fully, they deliberately chose the unqualified term "persons" for apportionment purposes rather than the narrower formulation "citizens and inhabitants of every age, sex, and condition." U.S. Const. art. I, § 2, cl. 3; James

Madison, *The Records of the Federal Convention of 1787*, vol. 2, at 566, 571 (Max Farrand ed., 1911). Article I, Section 2's requirement that members of Congress be chosen by people from districts "founded on the aggregate number of inhabitants," The Federalist No. 54, at 338 (Madison), included *all* persons, regardless of citizenship, voting, and/or legal status. *See Evenwel v. Abbott*, 578 U.S. 54, 69 (2016) ("[I]t remains beyond doubt that the principle of representational equality figured prominently in the decision to count people, whether or not they qualify as voters."); *see Garza v. County of Los Angeles*, 918 F.2d 763, 774 (9th Cir. 1990) ("The framers were aware that this apportionment and representation base would include categories of persons who were ineligible to vote—women, children, bound servants, convicts, the insane, and, at a later time, aliens. Nevertheless, they declared that government should represent all the people."). As then-current dictionaries made clear, "an 'enumeration' requires an actual counting" of all persons. *U.S. House of Representatives*, 525 U.S. at 346 (Scalia, J., concurring in part) (collecting dictionary definitions); *Utah v. Evans*, 536 U.S. 452, 475 (2002) ("Late 18th-century dictionaries define the word simply as an 'act of numbering or counting over[.]'" (quoting 1 Samuel Johnson, A Dictionary of the English Language 658 (4th rev. ed. 1773))).

Because the framers sought a uniform way to count populations for purposes of apportionment, it made sense that they settled on "persons," rather than eligible voters or citizens, because suffrage practices varied significantly across the states. Many inhabitants, particularly Black Americans, were denied the right to vote but would nevertheless be included in the census. 2 The Records of the Federal Convention of 1787, at 57 (Max Farrand ed., rev. ed. 1966); The Federalist No. 54. Moreover, citizenship was not synonymous with voting eligibility at the founding: noncitizens could vote in many states, and the last states did not restrict suffrage to citizens until the 1920s. *See* Ron Hayduk, *Democracy for All* 15-40 (2006); *Minor v. Happersett*, 88 U.S. (21 Wall.) 162, 177 (1874).

2. When Congress amended the Constitution through passage of the 14th Amendment, it confirmed that apportionment was based, and had always been based, on the whole number of persons, regardless their legal status.

Legislative history for the Fourteenth Amendment confirms that the Census's requirement to "count[] the whole number of persons in each State" necessarily includes noncitizens. Congress, 80 years after the Constitution's ratification, again chose the term "persons" as the basis for congressional apportionment over other limiting terms, like citizens or eligible voters. *See* Cong. Globe, 39th Cong., 1st Sess. 357-59, 2986-87 (1866). Indeed, Congress explicitly rejected proposals limiting apportionment to eligible voters or citizens.

One resolution for the Fourteenth Amendment, for example, proposed allocating House seats to states "according to their respective [number of] legal voters," specifying that they must be "either natural-born citizens or naturalized foreigners." Cong. Globe, 39th Cong., 1st Sess. 10 (1866); *see Evenwel*, 578 U.S. at 64-66. Congress rejected this approach. Many legislators then declared population as the "true basis of representation" for the very reason that non-voters have "as vital an interest in the legislation of the country as those who actually deposit the ballot." Cong. Globe, 39th Cong., 1st Sess. 141, 377 (1866) (Comments by Rep. Blaine); *see id.* at 434 (remarks of Rep. Ward); *see also id.* at 411 (remarks of Rep. Cook) (arguing in favor of "persons," as a census of voters would be impracticable, would be unjust toward northeastern states, which had more women and children than western states, and would "take[] from the basis of representation all unnaturalized foreigners").

Congress likewise rejected a proposal to substitute "citizens" for "persons" as the basis of apportionment. Representative Conkling, who was responsible for the language ultimately enacted in Section 2 of the Fourteenth Amendment, explained that "'Persons,' and not 'citizens,' have always constituted the basis [of apportionment]" and that the Constitution "always was opposed to" substituting "citizens" for "persons." *Id*. at 359; *see id.* at 2767 (remarks of Sen. Howard, the floor manager for the Fourteenth Amendment) (noting that "Numbers, not voters; numbers, not property; this is the theory of the Constitution."); *Id.* at 2944 (remarks of Sen. Edmunds) (noting "[t]he fathers who founded this Government acted upon the idea . . . that the representation, as a principle, in general was to be based upon population, independent of the franchise, independent of citizenship" and calling apportionment by population an "impregnable" principle).

This was not a hypothetical consideration; it reflected the reality that, at the time, substantial populations of non-naturalized immigrants were already included in the apportionment base. *Id.* at 359 (remarks of Rep. Conkling) (noting that "many of the large States held their representation [in the House] in part by reason of their aliens"). At the time, more than two million unnaturalized immigrants were primarily concentrated in the Northern states and excluding them from future population counts risked depriving those states of up to seventeen seats in Congress. *Id.* at 2986-87 (remarks of Sen. Wilson).

For these reasons, and in acknowledgement of the Constitution's clear language on the matter, Congress adopted Conkling's motion to strike "citizens of the United States in each State" from the draft, deliberately replacing those words with "persons in each State, excluding Indians not taxed." Unnaturalized immigrants–noncitizens–therefore remained within the census count. Benjamin B. Kendrick, *The Journal of the Joint Committee of Fifteen on Reconstruction: 39th Congress, 1865-1867*, at 52 (1914); Cong. Globe, 39th Cong., 1st Sess. 141, 432 (1866)(remarks of Rep. Bingham) (explaining that "[u]nder the Constitution as it now is and as it always has been,

the entire immigrant population of this country is included in the basis of representation," and that the "whole immigrant population should be numbered with the people and counted as part of them."); *Id.* at 411 (remarks of Rep. Cook) (noting that representation based on voting improperly "takes from the basis of representation all unnaturalized foreigners"). The legislative record thus confirms that Section 2 upholds the principle that apportionment is based "on the largest basis of population, counting every man, woman, and child", and that "the whole population is represented; that although all do not vote, yet all are heard." *Id.* at 705, 1280 (remarks of Sen. Fessenden).

The Constitution's original text and the Convention record, along with the legislative history of section 2 of the Fourteenth Amendment, clearly establish that congressional apportionment was based on population—not citizenship, immigration status, or voting eligibility. Changing the "usual residence" rule for the purpose of excluding foreign-born persons currently living, and contributing to their communities, would contravene constitutional requirements.

C. The Census Act's language supports including all "persons" in the apportionment base, whatever their citizenship.

Just as the Constitution, both at ratification and the passage of the 14th Amendment, has always required inclusion of all persons, not citizens, in the apportionment base, so too does the Census Act. Indeed, the Bureau's proposed exclusion of noncitizens from the apportionment base cannot be reconciled with Congress's directive that, to effectuate reapportionment, "the President shall transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed." 2 U.S.C. § 2a(a); see also 13 U.S.C. § 141(b) (requiring the Secretary of Commerce to report to the President, as the basis for apportionment, the "total population" of each State). Ever since this statutory language was enacted in 1929, "the ordinary public meaning of 'persons in each state' has included and still includes undocumented immigrants living in each state." *City of San Jose, California v. Trump*, 497 F. Supp. 3d 680, 735 (N.D. Cal.), *vacated and remanded*, 141 S. Ct. 1231 (2020).

The statutory text forecloses excluding persons based on immigration status. When Section 2a(a) was enacted in 1929, "person" meant "human being." Webster's Practical Dictionary 518 (1931). And "in" meant "within" or "inside." *Id*. at 379. By the commonly understood definitions at the time, noncitizens were intended to be counted for apportionment as they qualified as persons residing within the physical boundaries of their respective States. The legislative history of the

1929 Act further reinforces the statute's plain meaning as Congress expressly considered and rejected an amendment that would have excluded noncitizens from the apportionment base.[6]

The statute's express exclusion of "Indians not taxed," moreover, confirms that Congress did not otherwise intend to exclude other particular classes of persons. *See TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001). Had Congress intended to limit the apportionment base to citizens or persons with lawful immigration status, it knew how to say so. *See, e.g.*, 5 U.S.C. § 552a(a)(2) (defining "individual" as "a citizen of the United States or an alien lawfully admitted for permanent residence"). The Bureau's practice, then and now, comports with the law: Since the first census, persons residing in the United States have always been included in the apportionment base without regard to immigration status. Congress was aware of that "longstanding practice" when it enacted Section 2a(a). *United States v. Providence Journal Co.*, 485 U.S. 693, 705 n.9 (1988).

The Bureau likewise has, until now, consistently interpreted the statute to include noncitizens regardless of legal status. For example, the Residence Rule for the 2020 census provides that a person's state is determined by "usual residence," meaning "the place where a person lives and sleeps most of the time." Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018). The Bureau explained that this approach is "consistent with the intent of the Census Act of 1790" and "guided by the constitutional and statutory mandates to count all residents of the several states." *Id*. Under that rule, "[c]itizens of foreign countries living in the United States" are counted at the U.S. residence where they live and sleep most of the time. *Id*. at 5533; *See Franklin v. Massachusetts*, 505 U.S. 788, 806, 112 S. Ct. 2767, 2778, 120 L. Ed. 2d 636 (1992). Redefining "usual residence" to exclude noncitizens directly defies the constitutional and statutory framework that the Census has operated under since its and the country's very founding.

Moreover, Congress subsequently rejected multiple proposals to change that rule–because doing so would have been unconstitutional. In 1940, it rejected legislation excluding all noncitizens from the apportionment base. *See* H.R. Rep. No. 76-1787, at 1 (1940). In 1980, Congress similarly rejected numerous bills introduced to exclude undocumented immigrants from the 1980 census on the basis that excluding noncitizens would violate the Fourteenth Amendment. *See, e.g.*, 126 Cong.

[6]The Senate Legislative Counsel concluded that there was "no constitutional authority" to exclude aliens from enumeration for apportionment. 71 Cong. Rec. 1821–1822 (1929). Apportionment must include "every single human being residing within the State." *Id*. at 1971 (remarks of Sen. Blaine). Thus, Congress understood that this rule encompassed immigrants who lacked lawful status. By 1929, Congress had enacted numerous immigration restrictions, including the Chinese Exclusion Act and Immigration Act of 1924. Members therefore knew that persons who had entered the country "illegally" were nevertheless being counted for apportionment. *See* 71 Cong. Rec. 1973 (Sen. Barkley); *id*. at 2283 (Rep. Robsion). At the time of the Census Act's enactment there were "at least three or four million" undocumented immigrants in the country. *Id*. at 1976 (remarks of Sen. Barkley). Yet Congress retained the requirement that apportionment include the "whole number of persons."

Rec. 3578 (1980) (H.R. 6577); *id.* at 4202 (S. 2366); *id.* at 4528 (H. Res. 594); *id.* at 5266 (H.R. 6769); *id.* at 5522 (H.R. 6812); *id.* at 22,140 (H. Amdt. to H.R. 7583); *see also Census: Counting Illegal Aliens, Hearing Before the Subcomm. on Energy, Nuclear Proliferation and Fed. Servs. of the S. Comm. on Governmental Affairs on S. 2366*, 96th Cong. 95 (1980) (DOJ analysis). Likewise, a proposed amendment to block funding to certify the 1980 census figures due to the inclusion of undocumented immigrants was denounced as unconstitutional and voted down. 126 Cong. Rec. 22,140 (1980) (H.R. 7542); *id.* at 31,899 (vote on H.R. 7542); *see also Undercount and the 1980 Decennial Census: Hearing before the Subcomm. on Energy, Nuclear Proliferation and Fed. Servs. of the S. Comm. on Governmental Affs.*, 96th Cong. 44 (1980) (statement of Vincent Barabba, Director, U.S. Census Bureau (1973-1976, 1979-1981)). And a three-judge panel also dismissed a lawsuit challenging the inclusion of noncitizens in the 1980 Census stating that plaintiffs' case was "very weak on the merits" because "immigrants, legal and illegal alike, are clearly 'persons'" under any reading of the Constitution. *Fed'n for Am. Immigr. Reform v. Klutznick*, 486 F. Supp. 564, 569-73, 576 (D.D.C. 1980) (three-judge court).

Similar events occurred around the time of the 1990 census. *See 1990 Census Procedures and Demographic Impact on the State of Michigan: Hearing before the H. Comm. on Post Off. and Civ. Serv.*, 100th Cong. 148 (1988) (Congressional Research Service report); *id.* at 240 (DOJ analysis of H.R. 3814). In 1989, it rejected legislation specifically seeking to exclude undocumented immigrants. *See* 135 Cong. Rec. 14539–14540 (1989). Members again explained that the Constitution and statutory language did not permit such an exclusion. As Senator Bumpers put it, Congress was required to count "persons," not merely citizens. *Id*. at 14551. These efforts have continued unsuccessfully in more recent years. *See* Cong. Research Serv., R41048, *Constitutionality of Excluding Aliens from the Census for Apportionment and Redistricting Purposes* 10 (2012); *see Counting Every Person: Safeguarding the 2020 Census Against the Trump Administration's Unconstitutional Attacks: Hearing before the H. Oversight Comm.*, 116th Cong. (July 29, 2020) (statement of Robert M. Groves, Former Director, U.S. Census Bureau (2009-2012)) ("This goal, a complete enumeration of all persons resident in the country has been the basis of all censuses since 1790. It has been the basis of reapportionment decade after decade.").

* * * * *

The Bureau's current proposal to change the definition of "usual residence" in order to exclude undocumented persons and other visa holders from apportionment bases contradicts and violates the extensive constitutional and statutory framework underlying the decennial census. There is simply no legal basis upon which the Bureau can reinterpret "inhabitants" and "usual residence" to exclude noncitizens from apportionment.

D. No court has ruled that persons should be removed from census counts because of their citizenship status.

Representatives serve all people in their districts, not just citizens or those eligible to vote.[7] As the Supreme Court explained, "[n]onvoters have an important stake in many policy debates and in receiving constituent services," and "total-population apportionment promotes equitable and effective representation." *Evenwel*, 578 U.S. at 54–55. Accordingly, census counts include noncitizens because the Framers, and federal legislators since, determined that representation should reflect the total population, not merely the voting population.[8]

Ten years ago, the Supreme Court held that constitutional history, precedent, and practice require that a State or locality draw legislative districts based on total population, which includes people ineligible to vote, such as noncitizens. *Evenwel*, 578 U.S. at 54. The Court explained that "[c]onstitutional history shows that, at the time of the founding, the Framers endorsed allocating House seats to States based on total population." *Id.* Using "a total-population baseline served the principle of representational equality." *Id.* at 54-55. The proposed changes to the definition of "usual residence," and thus the apportionment base, are "inconsistent with the 'theory of the Constitution.'" *Id.* at 55 (citing Cong. Globe, 39th Cong., 1st Sess., 2766 – 2767). Indeed, "the Court has consistently looked to total-population figures when evaluating whether districting maps violate the Equal Protection Clause by deviating impermissibly from perfect population equality." *Id.*

The Framers required an actual count of every resident to "limit political chicanery" and to prevent the census count from being "skewed for political ... purposes." *Dep't of Com. v. New York*, 588 U.S. 752, 803, 139 S. Ct. 2551, 2586, 204 L. Ed. 2d 978 (2019) (Breyer, J., Ginsburg, J., Sotomayor, J., and Kagan, J., concurring in part and dissenting in part) (citations omitted). The "Framers knew that the calculation of populations could be and often were skewed for political or financial purposes." *Evans*, 536 U.S. at 500 (THOMAS, J., concurring in part and dissenting in part). Hence, the Framers desired to bind or "shackle" the legislature so that neither future Congresses nor the States could allow biases to influence apportionment. *Id.* at 500; 2 The Founders' Constitution 103-104 (P. Kurland & R. Lerner eds.1987); The Federalist No. 54, pp. 340–341 (C. Rossiter ed.1961) (James Madison noting "it is of great importance that the States

[7] Recently, the Supreme Court recognized that the United States has the right and responsibility to govern all persons within the boundaries of its jurisdiction regardless of a person's legal status. *Trump v. Barbara*, 146 S. Ct. 2438, 225 L. Ed. 2d 876 (2026).

[8] The Constitution requires "equal representation for equal numbers of people." *Wesberry v. Sanders*, 376 U.S. 1, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964). That is "the fundamental goal for the House of Representatives" and "the high standard of justice and common sense which the Founders set for us." *Id.*

should feel as little bias as possible to swell or to reduce the amount of their numbers."); *Id.*, No. 36, at 220 (Alexander Hamilton noting "[a]n actual census or enumeration of the people must furnish the rule, a circumstance which effectually shuts the door to partiality or oppression.").

Thus, excluding people from apportionment based on citizenship status would not only violate the Constitution and existing law–it would also be contrary to Supreme Court precedent reviewing the purpose of the Apportionment Clause.

IV. The rule is arbitrary and capricious under the Administrative Procedure Act

Since the proposed rule violates the constitutional and statutory requirements for apportionment and relies on factors Congress did not intend when enacting section 2, the agency action is unlawful under the APA. 5 U.S.C. § 706(2). The Census Act requires the decennial census to produce a "tabulation of total population by States" for congressional apportionment, 13 U.S.C. § 141(b), while 2 U.S.C. § 2a(a) requires the President to report the "whole number of persons in each State." U.S. Const. art. I, § 2, cl. 3 & amend. XIV, § 2. It is, therefore, arbitrary and capricious for the Bureau to propose changing the "usual residence" definition and to exclude noncitizens from apportionment, as this would directly contradict the factors Congress considered and the very language it stipulated when enacting Section 2 of the Fourteenth Amendment and the Census Act. *Department of Commerce v. New York*, 139 S. Ct. 2551, 2569 (2019); *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42-43 (1983).

Even assuming, *arguendo*, that the Bureau is correct in its assertion that the Census Act confers discretion on the Bureau to define "usual residence," add a citizenship question, and remove existing race and ethnicity datapoints, the Proposed Rule would nevertheless be arbitrary and capricious. The Bureau has failed to adequately consider the substantial reliance interests engendered by the longstanding practice of counting all persons at their usual residence, regardless of citizenship or immigration status. *See Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 30–33 (2020). The Bureau has likewise failed to provide a reasoned explanation for its departure from settled policy or to acknowledge and adequately explain the consequences of that change. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009). As discussed in Sections V and VI of this comment, the Bureau has failed to consider how changing the definition of "usual residence," adding a citizenship question, and removing questions on race and ethnicity will foreseeably have significant and negative consequences on census accuracy, apportionment of vital federal funds, congressional apportionment, and civil rights enforcement. Accordingly, even if the Bureau possesses statutory discretion to implement these changes, which it does not, its exercise of that discretion through the

Proposed Rule would be arbitrary and capricious and therefore unlawful under the APA. 5 U.S.C. § 706(2)(A).

V. Implementation of the proposed rule—including the Bureau's contemplated use of a citizenship question and overreliance on *administrative data*—would deter participation, lead to inaccurate counts, violate privacy protections, and hurt immigrant communities.

A. Adding a new citizenship question would deter participation and result in an undercount.

If, in addition to redefining "usual residence," the Bureau includes a question about citizenship status on the census form, as it claims to be considering, it will most certainly suppress participation by many mixed and noncitizen households, resulting in drastic undercounts and an inaccurate decennial count. Indeed, the Bureau reached the conclusion that hinging census inclusion on citizenship would dampen participation. In its own research conducted before the 2020 Census, the Bureau estimated that including a citizenship question on the census form would reduce self-response in households containing noncitizens by eight percent, resulting in a projected 2.2 percent decline nationwide.[9] When applied across a total of 120 million households,[10] this projected decline could result in 2.5 million household undercounts, all of which would require government follow-up.

Citizens and noncitizens alike, in an effort to protect undocumented persons in their households, will refuse to participate in the census if the Bureau adopts the proposed rule. And the resulting undercounts could impact residents in communities across the country. Undercounts have serious consequences on funding distribution, district line-drawing, and data gathering for vote dilution and other discrimination cases. The economic consequences of projected undercounts are sizable.[11] Census-derived population data guides the distribution of large yearly amounts of federal funding,

[9] Brown, J. D., Heggeness, M. L., Dorinski, S. M., Warren, L., & Yi, M. (2019). Predicting the effect of adding a citizenship question to the 2020 Census. *Demography, 56*, 1173–1194. https://doi.org/10.1007/s13524-019-00803-4; Lydia Anderson, et al., U.S. Census Bureau, *Households and Families: 2020*, C2020BR-10 (March 2024), https://www2.census.gov/library/publications/decennial/2020/census-briefs/c2020br-10.pdf

[10] *Id.*

[11] The precise fiscal effect of any particular undercount varies by program and funding formula, but the underlying policy problem is seemingly straightforward–when census data inaccurately describe the population, systems that rely on that data operate from an inaccurate baseline. Communities with substantial immigrant populations could therefore experience the consequences of an undercount not only through representation, but through mangled information needed to allocate critical resources.

including for Medicaid, Title I education programs, housing assistance, and more.[12] GAO has repeatedly documented that major federal assistance programs rely on census and census-derived population data to allocate funding.[13] And a George Washington University analysis concluded that, in FY2017 alone, 316 federal spending programs relied on census-derived data to distribute more than $1.5 trillion to state and local governments, nonprofits, businesses, and households nationwide.[14] For apportionment and redistricting, undercounts could make every state legislative map vulnerable to Equal Protection challenges. A Brennan Center analysis projected that approximately 21.3 percent of state house seats and 16.7 percent of state senate seats could be presumptively unconstitutional if only registered voters, a proxy for U.S. citizenship, were counted.[15] In eight states, the percentage of house or senate districts with constitutional problems could be more than 40 percent.[16]

The Bureau should not adopt policies that generate these negative outcomes. The Supreme Court has already recognized the link between a citizenship question, reduced participation, and undercounting. In *Department of Commerce v. New York*, a case filed after the Bureau first tried adding a citizenship question to the form, the Court upheld the district court's finding (even as it remanded the case back for determination of the Bureau's explanation for the change) that adding such a question would likely cause noncitizen households–or those including at least one noncitizen–to respond at lower rates and, in turn, cause undercounts.[17] The risk of nonparticipation is far from speculative; as the Court explained, nonparticipation would be "the predictable effect of Government action." When the administration, thereafter, tried to exclude undocumented immigrants from the 2020 apportionment, the court, in *New York v. Trump*,[18] found that the

[12] U.S. Census Bureau, *Census Bureau Data Guide More Than $2.8 Trillion in Federal Funding in Fiscal Year 2021* (June 14, 2023), https://www.census.gov/newsroom/press-releases/2023/decennial-census-federal-funds-distribution.html
[13] See U.S. Gov't Accountability Off., *GAO/HEHS-99-69, Formula Grants: Effects of Adjusted Population Counts on Federal Funding to States* (1999), https://www.gao.gov/assets/hehs-99-69.pdf
[14] Andrew Reamer, *Counting for Dollars 2020: The Role of the Decennial Census in the Geographic Distribution of Federal Funds, Brief 7: Comprehensive Accounting of Census-Guided Federal Spending (FY2017)*, George Washington Institute of Public Policy, George Washington University (November 2019), https://gwipp.gwu.edu/sites/g/files/zaxdzs6111/files/downloads/Counting%20for%20Dollars%202020%20Brief%207A%20-%20Comprehensive%20Accounting.pdf
[15] Michael Li and Eric Petry, *The Impact of Evenwell*: *How using voters instead of people would drastically change redistricting*, Brennan Ctr. for Justice (Dec. 7, 2015), https://www.brennancenter.org/sites/default/files/analysis/Impact_of_Evenwel.pdf.
[16] *Id.*
[17] *Department of Commerce v. New York*, 588 U.S. 752 (2019).
[18] *New York v. Trump*, 485 F. Supp. 3d 422, 447-56 (S.D.N.Y. 2020).

Bureau's exclusion policy was *already* discouraging immigrants and members of mixed-status households from participating in the census.[19]

By imposing a citizenship question, the Bureau will necessarily prompt large-scale nonparticipation by millions of households, all of which results in drastic undercounts.[20] The Fourteenth Amendment, as the Bureau well knows, requires apportionment based on the "whole number of persons in each State," not merely citizens or eligible voters.[21] And the Bureau cannot achieve this constitutional requirement if it imposes a practice that, according to its own research and the Supreme Court, has proven ineffective toward doing the job. The Bureau *knows* that inclusion of a citizenship question will trigger nonparticipation; therefore, it may not pursue that option, lest it neglect its constitutional duties.

B. The Bureau cannot obtain constitutionally required accurate counts by over relying on *administrative records*

Instead of relying on households' census responses–the most direct way to gauge the American population–the Bureau proposes relying on administrative records, including ACS data, which is compiled from random samples and is, thus, less accurate than direct responses from all households.

1. Direct survey responses provide more accurate counts than *administrative data*.

Administrative data are "non-survey datasets collected by government agencies and commercial entities" typically as a byproduct of nonstatistical activities or administering a service.[22] The Bureau has used such information for decades to *supplement* U.S. inhabitants' responses to its surveys as well as spot fill-in data the Bureau could not collect from respondents.[23] When reliably

[19]Although the Supreme Court later vacated the judgment on justiciability grounds, the prior ruling is indeed instructive since it did not adjudicate or reject the underlying empirical evidence concerning deterrence. *Trump v. New York*, 592 U.S. 125, 130-34 (2020).

[20]The resulting risk of undercount is especially significant because substantial coverage disparities already exist. The Census Bureau's post-enumeration analysis found that the 2020 Census undercounted the Hispanic or Latino population by 4.99 percent, the Black population by 3.30 percent, and Native Americans living on reservations by 5.64 percent, while non-Hispanic White residents were overcounted by 1.64 percent. Hansi Lo Wang, *The 2020 Census Had Big Undercounts of Black People, Latinos and Native Americans*, KQED (Mar. 10, 2022), https://www.kqed.org/news/11907796/the-2020-census-significantly-undercounted-black-people-latinos-and-native-americans. Introducing a citizenship or legal-status question further compounds these disparities by further suppressing participation among households and communities that have historically had a more difficult time being counted.

[21] U.S. Const. amend. XIV, § 2.

[22] Jae June Lee et al., Brief: Administrative Data in the 2020 Census, Georgetown Center on Poverty and Inequality

[23] *See* Taylor Knoedl, Administrative Data at the U.S. Census Bureau, Congress.gov (Aug. 8, 2025). *Administrative data* from federal agencies can include mailing addresses from the United States Postal Service, contributors to and

linked to an inhabitant's personally identifiable information – key information already assembled by the Bureau – *administrative data* can fill in missing information and consequently strengthen the Bureau's statistical analyses.[24] But even the Bureau admits that reliably linked data can contain errors.[25]

The Bureau may use *administrative data* to minimize the burdens on inhabitants responding to the census surveys.[26] But the Bureau cannot rely solely on non-survey data especially if doing so would violate its lawful duty "to conduct a census that is accurate and that fairly accounts for the crucial representational rights that depend on the census and the apportionment."[27] In fact, on multiple occasions, Congress has empowered the Bureau to innovate how the Bureau solicits direct responses to its surveys, indicating that the legislature considers voluntary participation and nonresponsive follow-ups—not administrative data—as the best means of producing the most accurate data.[28] At no point does federal law treat *administrative data* as a valid substitute for voluntary participation and nonresponsive follow-ups to Bureau surveys.

2. Overreliance on *administrative data* undermines the Bureau's constitutional and legal duties

The Bureau should not rely on *administrative data* alone to assess the nation's demographics. First, such reliance is inappropriate for the Bureau to fulfill the nation's foundational democratic and Constitutional requirements. The U.S. Constitution mandates a count of *every* person living in the country every ten (10) years,[29] meaning that "the whole number of persons in each state" must be counted regardless of their citizenship or legal status.[30] Using government-curated data to distinguish and possibly exclude residents from statistical analyses that underpin political representation and inform federal-funding access are unwarranted and unconstitutional.

Second, *administrative data* are notorious for containing stale and inaccurate information about race, ethnicity, and legal status.[31] While commonly recorded information like names, addresses,

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recipients of public assistance from the Social Security Administration, immigration records from the Department of Homeland Security, and public housing records from the Department of Housing and Urban Development. *Id.*

[24] See generally, Campaign Legal Center, *Comment on Collection of State Administrative Records Data*, OMB Control No. 0607-0995, at 9 (Jan. 17, 2020).

[25] *See Kravitz v. U.S. Dep't of Com.*, 366 F.Supp.3d 681, 702 (S.D. Md Apr. 5, 2019).

[26] See U.S. Code Title 13, section 6.

[27] Dept. of Commerce v. New York, 588 U.S. 752, 773 (2019) (quoting *Franklin*, 505 U.S., 819-820 (1992) (Stevens, J., concurring in part and concurring in judgment)). See 2 U.S.C. sec. 2a.

[28] *NAACP v. Bureau of Census*, 382 F.Supp.3d 349, 358 (S.D. Md. 2019) (recounting Congressional enactments in the 20th century to help the Bureau better collect survey responses).

[29] U.S. Const., Art. I.

[30] U.S. Const., Amend. XIV.

[31] *See generally* U.S. Dept of Health & Human Servs, "Data Brief: Inaccuracies in Medicare's Race and Ethnicity Data Hinder the Ability to Assess Health Disparities," US Dept of Health & Human Servs Ofc. of Insp. Gen., https://oig.hhs.gov/documents/evaluation/10115/OEI-02-21-00100-Complete%20Report.pdf; Kosuke Imai, et al., "Addressing census data problems in race imputation via fully Bayesian Improved Surname Geocoding and name

and date of birth are often present, characteristics for race, ethnicity, and household relationships are less often recorded and, even when they are, less accurately documented in the *administrative data*.[32] Exacerbating this information deficiency are less robust government records for residents who have fewer routine interactions with government programs and services.[33] For example, residents from mixed immigration status households or those whose primary language is not English avoid registering for public benefit programs for fear of incurring unwanted immigration enforcement attention, despite paying billions in taxes annually.[34] This means reliance on *administrative data* from these federal programs will be less than efficacious in generating inclusive and accurate demographic data for households that are underresponsive or nonresponsive to census surveys.

The Bureau need only consider the U.S. Department of Homeland Security's (DHS) SAVE program to appreciate the pitfalls of overlying on *administrative data*. The SAVE program, reliant on linked records and datasets from several federal and state agencies such as the Social Security Administration (SSA) and Internal Revenue Service (IRS), has frequently mislabeled or misidentified U.S. residents as non-citizens because it uses outdated and inaccurate information.[35] Like the decennial census, the Trump Administration uses the current SAVE program to gatekeep who participates and is represented in the nation's democratic systems. The Bureau should take note of the SAVE program's harmful outcomes. It should not replicate known data failures and impose faulty data analyses for something as foundational as the nation's decennial census.

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supplements, Science Advances, https://imai.fas.harvard.edu/research/files/racepred.pdf; Josh Johnson et al., The accuracy of race & ethnicity data in US based healthcare databases: A systematic review, Amer. J. of Surgery, https://www.sciencedirect.com/science/article/abs/pii/S0002961023001976; Nancy Wittmer, et al., A health system's experience with inclusive race and ethnicity data collection, and the need for data equity principles, Health Affairs, https://www.healthaffairs.org/content/forefront/health-system-s-experience-inclusive-race-and-ethnicity-data-collection-and-need-data

[32] *Id.* (citing Sonya Rastogi & Amy O'Hara, "2010 Census Match Study," U.S. Census Bureau (Nov. 16, 2012) and Dave McClure, et al., "Administrative Records in the 2020 US Census," Urban Institute (May 2017)).

[33] Jae June Lee et al. "Brief: Administrative Data in the 2020 Census," Georgetown Law Ctr on Poverty & Inequality, 5 (March 2020).

[34] Jennifer Haley, et al., Many immigrant families with children continued to avoid public benefits in 2020, despite facing hardships, Urban Inst., 1 (May 2021), https://www.urban.org/sites/default/files/publication/104279/many-immigrant-families-with-children-continued-avoiding-benefits-despite-hardships_0.pdf; Staff, Immigrants Help Fund Our Public Programs, Amer. Imm. Council (Apr. 11, 2023), https://www.americanimmigrationcouncil.org/blog/immigrants-help-fund-our-public-programs/.

[35] *E.g.* Jen Fifield, et al. "*Not Ready for Prime Time:" A Federal Tool to Check Voter Citizenship Keeps Making Mistakes.* ProPublica (Feb. 13, 2026) https://www.propublica.org/article/save-voter-citizenship-tool-mistakes-confusion; Fair Elections Center, *Eligible Voters at Risk: Examining Changes to USCIS's SAVE System* (July 2025), fairelectionscenter.org/wp-content/uploads/2025/07/Examining-Changes-to-USCISs-SAVE-System.pdf; Jasleen Singh, *Watch out for false voter fraud claims fueled by SAVE program* (June 12, 2026), https://www.brennancenter.org/our-work/research-reports/watch-out-false-voter-fraud-claims-fueled-save-program;

3. Replacing voluntary responses with *administrative data* amplifies harmful data disparities

At the direction of the first Trump Administration, the Bureau ignored input from inhabitants and instead used *administrative data* for the Census. In 2019, in preparation for the 2020 Census surveys, the Bureau rushed to substitute *administrative data* for survey responses. Census workers revealed that the Bureau, mostly for low-income households in minority communities, "closed cases abruptly and without clear explanation, swapping in data from existing government records for the gold standards [of] self-response or in-person enumeration."[36] For example:

- In one whistleblower complaint, Baltimore, MD field supervisor Amanda Colianni alleged thousands of Baltimore cases were "miscategorized as "completed"… when in reality only one attempt had been made to visit those addresses and no information was garnered."[37] Standard Bureau practice previously required staff to attempt six visits to a residence before the Bureau could use *administrative data* to deduce the key characteristics of the inhabitants.[38] The Bureau, at the direction of the first Trump Administration, abandoned that practice for the convenience of government records, their known inaccuracies notwithstanding.

- Oakland, CA field supervisor Gondica Nguyen encountered similar Bureau actions. One of her staff sought clarity from Nguyen when a residence she had visited only once and planned to revisit for nonresponsive follow-up was suddenly reclassified as closed – supposedly by the staff member herself. Nguyen searched the census database for all Oakland cases marked closed for "max attempt" after only a single attempted site visit. She reportedly found 21,866 cases closed in such a manner and repeatedly notified her manager of the issue.[39]

- Peggy Lee Scott, another field supervisor, noticed similar actions for addresses in a public housing project just north of Berkeley, CA. She also reported the issue to her managers.[40]

- A Sacramento, CA census staffer's experience similarly revealed that the Bureau relied on *administrative data* rather than complete nonresponsive follow-up visits to residences. He

[36] David Rodriguez & Byard Duncan, Census workers raise concerns about data quality, with bureau leaning on records rather than in-person counts, Reveal News (Jan. 12, 2021).
[37] *Id*. (quoting synopsis from the U.S. Dept of Commerce's Office of Inspector General).
[38] Sarah Gibb et al., *2020 Census Nonresponse Followup Operational Assessment Report* (U.S. Census Bureau, November 27, 2023), 19, https://www2.census.gov/programs-surveys/decennial/2020/program-management/evaluate-docs/EAE-2020-nonresponse-followup.pdf
[39] Rodriguez, supra. note 34.
[40] *Id*.

> reported being pressured by managers to close cases using incomplete data from residential lease agreements provided by apartment companies. These same managers instructed the staffer to solely identify inhabitants from the lease, even if the contract left off a leaseholder's spouse and children. Like Scott's experience, *administrative data* substituted actual survey responses in low-income areas that housed a high proportion of people of color.[41]

For decades, the Bureau has consistently undercounted residents of color and overcounted white residents.[42] If the Bureau substitutes *administrative data* for direct response surveys, this problem–and the resulting undercounts–will only worsen. Indeed, the Bureau's conduct during the 2020 Census, coupled with its increased reliance on *administrative data* in future censuses, indicates that the Bureau's new norm will be a racially skewed, two-tiered system of political apportionment, one in which foreign-born residents, first generation Americans, and communities of color are overlooked and undercounted. This is especially true because federal databases of administrative data were never designed to accurately and comprehensively record their demographic information.[43] They were made to deliver services, making demographic data collection secondary or optional.[44] If the Bureau follows through on its proposed rule, it will effectively fail to count all "persons" in the census, thereby abnegating its constitutional and federal law duties. Given this reported pattern of conduct by the Bureau, elevating *administrative data* would not lead to a more accurate and inclusive analysis of U.S. demographics. Instead, doing so would misidentify, mischaracterize, undercount, and possibly politically exclude American communities that are comprised of immigrant, multilingual, and mixed-status households.

C. Sharing personal records, as the Bureau intends to do, puts privacy at risk for all Americans.

In its statement, the Bureau claims that use of *administrative data* over direct survey responses would safeguard, rather than compromise, privacy. That assertion is unsupported by the available

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[41] *Id.*

[42] *Supra.* note 20.

[43] Administrative data "are subject to many of the problems that prompted the use of surveys in the first place: the systems of records may not necessarily include all of the population (and it may be unknown which parts are left out); they may be measuring something other than the issue of direct interest; and they may not be collected consistently over time." Innovations in Federal Statistics: Combining Data Sources While Protecting Privacy, Nat'l Acad. of Sci., Eng., and Med., ch. 3 (ed. Brian Harris-Kojetin & Robert Groves), https://www.ncbi.nlm.nih.gov/books/NBK425873/.

[44] E.g. OMB Revises Federal Race/Ethnicity Reporting Standards, Adds 'MENA' Category, Ctr. for Workplace Compliance (Apr. 4, 2024), https://cwc.org/CWC/CWC/Updates/2024/OMB-Revises-Federal-RaceEthnicity-Reporting-Standards-Adds-MENA-Category.aspx; U.S. Gov't Accountability Ofc., "Tax Equity: Lack of Data Limits Ability to Analyze Effects of Tax Policies on Households by Demographic Characteristics," GAO-22-104553 (May 18, 2022), https://www.gao.gov/products/gao-22-104553.

evidence. Overreliance of *administrative data* will, in fact, threaten the data privacy of every U.S. resident.

The Bureau declares that *administrative data* will reduce household response burden and in turn "increase response rate and thus improve the Bureau's record linkage efforts."[45] Under the proposed rule, the Bureau would collect reams of sensitive data from other agencies "including certain tax-return information," student data files from residential colleges and universities, Social Security numbers, names, and addresses to better identify nonresponsive U.S. residents.[46] Such data collection would occur without limitation, per the Bureau. It admits the proposed rulemaking is "not proposing any restrictions on its ability to receive demographic data from administrative records and other sources" nor "its ability to ask demographic questions" on any surveys other than the short-form decennial census questions.[47] By accessing and linking various datasets from multiple federal agencies, the Bureau would soon store and process billions of records for citizens and non-citizens alike every decade, making it the center of a prolific identity verification pipeline that - if misused or breached or hacked into - could not only throttle representative democracy in the U.S. but also make every U.S. resident vulnerable to privacy invasions and exploitation.

Justifications for obtaining this much personal data are not credible. In the last decennial census, the Bureau cancelled nonresponse follow-ups in favor of exclusive reliance on *administrative data*. Reliance on government-held personal records does not increase response rates; in fact, it reverses it. The Bureau, moreover, does not explain, across the eight pages of its proposal, how it will not only protect so much data but also how it will maintain residents' confidentiality and guarantee their long-term privacy.

1. U.S. residents will not support heavy reliance on *administrative data.*

The Bureau's proposed level of data access is neither in the public interest nor supported by the general public. U.S. residents "across languages [and] regions of the country, from both pretesting respondents and field staff" are concerned about confidentiality and data sharing with the Bureau, especially immigrants and those who reside with them.[48] In 2017, the Bureau's staff recounted survey respondents' "concerns…about confidentiality and data access related to immigrants."[49] These concerns led respondents to, among other things, not respond to survey questions, and even discontinue contact with Bureau surveys and staff.[50] A couple years earlier, Latino respondents

[45] See *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions*, 91 Fed. Reg. 57,524, 57,527.
[46] *Id*. at 57,527; Lee, *supra.* note 23 at 3, 6.
[47] *Id.* at 57527-28.
[48] Justin Levitt, Citizenship and the Census, 119 Colum. L. Rev. 1355, 1366 (2019).
[49] *Id*.
[50] *Id*.

were most likely to become nonresponsive when they thought questions elicited information too closely tied to citizenship status.[51]

Their distrust is warranted. Many citizens and legal permanent residents have family or connections to other residents at risk for immigration enforcement.[52] In order to protect noncitizen household members or the undocumented parents of citizen children, respondents may avoid the Bureau's surveys or refrain from fully disclosing information to enumerators. Thus, the Bureau should not seek information that ultimately would undermine the quality and accuracy of the decennial census.

2. Federal law prioritizes U.S. residents' privacy over the Bureau's pursuit of their personal identifying information

Congress intended the Bureau's data collection practices to respect the privacy of all U.S. residents. Title 13 of the U.S. Code, for example, places strong limitations on using data gathered by the Bureau, including prohibiting publication of any data that can identify respondents.[53] In 1974, Congress sagely passed the Privacy Act to make it "legally impossible for the Federal Government in the future to put together anything resembling a '1984' personal dossier on a citizen," and to provide "proper regard for privacy of the individual, confidentiality of data, and security of the system."[54] The Privacy Act is a critical check to unfettered data surveillance. Half a century later, this means the Bureau cannot unilaterally siphon, store, and disseminate U.S. residents' personal data from other federal and state agencies.

Congress also ensured the Family Educational Rights and Privacy Act (FERPA) restricted colleges and universities from disclosing without a student's consent the personally identifiable information in students' records, including, among other information: (1) identities of the students' parents and family members; (2) addresses of the students and students' families; (3) personal identifiers such as the students' Social Security numbers, student numbers, and biometric markers; and (4) information that alone or in combination is linked or linkable to a specific student.[55] Student data that encompasses citizenship status, race, and ethnicity, fall within these protections and are not part of the narrow privacy exceptions open to the Bureau.[56] In this sense, FERPA offers a special layer of privacy protections for Latino students and their families that include noncitizens.

[51] *Id*. at 1365.
[52] *Id*. at 1364.
[53] 13 U.S.C. sec. 9(a)(2).
[54] S. Comm. on Gov't Operations and H.R. Comm. on Gov't Operations, 94th Cong., 2d Sess., Legislative History of the Privacy Act of 1974 – S. 3418 (Pub. L. No. 93-579), Source Book on Privacy at 217, 884 (1976).
[55] 34 CFR sec. 99.3.
[56] *See* 34 CFR sec. 99.3, 99.31(a)(11), and 99.37; Lee, *supra.* note 23 at 3.

Any use of *administrative data* to ascertain citizenship or immigration status, as well as ethnic, racial, and gender demographics, should be protected from any disclosure that would undermine the privacy of census respondents, their household members, and U.S. residents in general.

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The Bureau cannot reasonably adopt a rule that it knows will deter census participation, compromise the accuracy and completeness of the census exacerbating racial and ethnic disparities in enumeration, threaten the privacy of the people the census is required to count, and undermine the constitutional requirement to count the whole number of persons in each State. Its failure to grapple with these consequences renders the Proposed Rule an unworkable and ill-advised policy that would be arbitrary and capricious under the APA. See *State Farm*, 463 U.S. at 43.

VI. The Bureau's proposed rule to eliminate race and ethnicity questions would undermine redistricting and civil rights enforcement

The Proposed Rule seeks to eliminate race and ethnicity questions from the decennial census, stripping the nation's once-a-decade enumeration of its most comprehensive source of race and Hispanic-origin data. This data is indispensable to equal representation and civil-rights enforcement.

A. Race and ethnicity data are essential to protect against illegal discrimination

Without comprehensive race and ethnicity data, with the level of geographic precision provided by the decennial census, discriminatory voting patterns would be harder to detect, representational disparities harder to measure, and violations of civil-rights protections harder to establish and remedy. The Bureau itself explains that race data is necessary to enforce antidiscrimination laws, evaluate whether government programs serve racial groups equitably, administer programs, and to evaluate disparities in voting, housing, employment, education, and health.[57] The Proposed Rule nevertheless characterizes race as "immaterial" to the core enumeration. That characterization overlooks the longstanding and essential role of decennial race and ethnicity data play in enforcing federal law and identifying unequal treatment across nearly every major area of public life.

Rather than collecting this information through the decennial enumeration, the Bureau instead proposes relying primarily on administrative records and separate sample surveys, including the American Community Survey (ACS). But those sources are not equivalent. The decennial census provides comprehensive race, Hispanic-origin, and voting-age population data down to individual

[57] U.S. Census Bureau, *Why We Ask Questions About Race*, https://www.census.gov/acs/www/about/why-we-ask-each-question/race/ (last visited Sept. 29, 2026).

census blocks, the blocks of electoral districts.[58] The ACS, by contrast, is a sample survey whose estimates carry margins of error and do not extend to the individual census-block level.[59] The ACS employs several statistical weights[60] to make the sample responses representative of the total U.S. population and housing units. These weights compensate for varying sampling rates across the nation's regions, adjust for differences between households that completed the survey and those that did not, and align the sample data with other Census datasets. The ultimate effect is the weights determine how many times a sampled individual's responses are counted when building aggregate statistics.[61] To function reliably, the weights must account for key demographic data including "race, and Hispanic origin" derived from the decennial Census.[62]

That distinction is critical because electoral districts are constructed by census blocks, making granular population data necessary to evaluate how proposed district lines impact racial and ethnic populations. There is no credible way for the federal and state governments to comply with antidiscrimination and election laws using the ACS statistics when requisite demographic data would go uncollected.

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[58] U.S. Census Bureau, *Decennial Census P.L. 94-171 Redistricting Data* (Nov. 29, 2023), https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html

[59] Seth E. Spielman, et al., *Patterns and causes of uncertainty in the American Community Survey* (2014), https://pmc.ncbi.nlm.nih.gov/articles/PMC4232960/; *see also* U.S. Census Bureau, *Sample Size Definitions*, https://www.census.gov/programs-surveys/acs/methodology/sample-size-and-data-quality/sample-size-definitions.html (last visited Sept. 30, 2026).

[60] Housing Weight to produce estimates of housing units; Person Weights to estimate the number of individuals even in households or group-quarter residencies; multiple Replicate Weights to calculate standard errors and margins of error at the household and population levels; and multiple Experimental Weights introduced in 2020 1-year estimates to adjust for data quality impacts from the COVID-19 pandemic. *See* Hsueh-Sheng Wu, CFDR Workshop Series: Introduction to American Community Survey (ACS), Ctr. for Family and Demographic Research (Jan. 29, 2025), https://www.bgsu.edu/content/dam/BGSU/college-of-arts-and-sciences/center-for-family-and-demographic-research/documents/Workshops/Spring_2025/introduction-to-acs-2025-2-ppt.pdf; U.S. Census Bureau, *Calculating Margins of Error Using ACS Variance Replicate Estimates (2026)*, https://staging.test.census.gov/data/academy/resources/videos/2026/calculating-margins-of-error-using-acs.html; Ofc. of Disease Prevention and Health Promotion, *American Community Survey (ACS),* U.S. Dept. of Health and Hum. Servs., https://odphp.health.gov/healthypeople/objectives-and-data/data-sources-and-methods/data-sources/american-community-survey-acs.

[61] U.S. Census Bureau, *Understanding the 2024 American Community Survey 1-Year Estimates,* https://www.census.gov/newsroom/blogs/random-samplings/2025/09/acs-1-year-estimates.html; U.S. Census Bureau, *American Community Survey and Puerto Rico Community Survey Design and Methodology (Version 3.0)*, Chap. 11, https://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/2022/acs_design_methodology_ch11_2022.pdf.; Redistricting Data Hub, American Community Survey (ACS), https://redistrictingdatahub.org/data/about-our-data/american-community-survey/.

[62] U.S. Census Bureau, *American Community Survey and Puerto Rico Community Survey Design and Methodology (Version 3.0)*, Chap. 11, p. 13, https://www2.census.gov/programs-surveys/acs/methodology/design_and_methodology/2022/acs_design_methodology_ch11_2022.pdf

The consequences would be especially significant for redistricting and enforcement of Section 2 of the Voting Rights Act. States rely on decennial census race and ethnicity data when drawing congressional and legislative districts,[63] while courts, the Department of Justice,[64] and affected communities use that data to assess whether district lines dilute minority voting strength or otherwise violate federal voting protections under the Voting Rights Act.[65] This analysis requires precise information about the size and geographic distribution of minority populations. Under *Thornburg v. Gingles*, courts must determine whether a minority population is sufficiently large and geographically compact to constitute a majority in a reasonably configured district;[66] similarly, in *Allen v. Milligan*, the Supreme Court relied on detailed data concerning Alabama's Black population and voting-age population to assess whether additional reasonably configured majority-Black districts could be drawn.[67] Without reliable race, ethnicity, and voting-age data at sufficiently granular geographic levels, courts, enforcement agencies, and litigants would be severely hampered in identifying racial disparities in voting, determining whether those disparities result from discriminatory voting practices, and establishing violations of federal civil-rights protections.[68]

The loss of comprehensive race and ethnicity data would also undermine the federal government's ability to identify, measure, and address discrimination across other critical areas of public life, including healthcare, education, housing, and employment. The Bureau expressly recognizes that race and ethnicity data are used to identify populations that may lack access to necessary medical services, monitor equal employment opportunities under Title VII of the Civil Rights Act of 1964, investigate housing discrimination, allocate funding to school districts for bilingual education services, and assess whether government programs and services equitably serve different racial and ethnic populations.[69] Without reliable demographic data, policymakers and enforcement

[63] U.S. Census Bureau, *Decennial Census P.L. 94-171 Redistricting Data* (Nov. 29, 2023), https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html

[64] Kristen Clarke, Assistant Att'y Gen., U.S. Dep't of Just., *Remarks at the National Conference of State Legislatures' Legislative Summit* (Nov. 4, 2021), https://www.justice.gov/archives/opa/speech/assistant-attorney-general-kristen-clarke-gives-remarks-national-conference-state

[65] U.S. Dep't of Just., *Guidance Under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, for Redistricting and Methods of Electing Government Bodies* (Apr. 2024), https://www.justice.gov/crt/case-document/file/1429826/dl?inline ("Consistent with past practice, the Department of Justice will evaluate districting plans and methods of election using the 2020 Census redistricting data set issued by the Census Bureau pursuant to Public Law 94-171, 13 U.S.C. § 141(c).")

[66] *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986).

[67] *Allen v. Milligan*, 599 U.S. 1 (2023).

[68] *Section 2 of the Voting Rights Act*, U.S. Dep't of Just., Civ. Rts. Div. (Apr. 5, 2023), https://www.justice.gov/crt/section-2-voting-rights-act

[69] U.S. Census Bureau, *In What Ways Do Race Data Help Communities?*, https://www.census.gov/help/topics/faq.in-what-ways-do-race-data-help-communities.html (last visited Oct. 30, 2026); U.S. Census Bureau, *Race: Why We Ask Each Question, American Community Survey*, https://www.census.gov/acs/www/about/why-we-ask-each-question/race/ (last visited Oct. 30); U.S. Census Bureau, *Understanding and Using American Community Survey*

agencies would have fewer means of identifying underserved communities, evaluating disparities in access to public services, and determining whether federal programs are effectively addressing longstanding inequalities.

Moreover, eliminating self-identified race and ethnicity data would make it substantially more difficult to investigate and remedy violations of federal civil-rights laws. Title VI of the Civil Rights Act of 1964 prohibits employment discrimination and discrimination based on race, color, and national origin in federally funded programs, including healthcare and education, while the Fair Housing Act prohibits discrimination in housing. 42 U.S.C. § 2000d *et seq*.; 42 U.S.C. § 3601 *et seq*. Enforcing these protections requires reliable demographic evidence to identify patterns of unequal treatment and assess discriminatory effects.[70] The Bureau's Equal Employment Opportunity Tabulation, for example, provides the primary external benchmark for comparing the racial and ethnic composition of an employer's workforce with the available labor force and is used by federal agencies to evaluate compliance with employment discrimination laws.[71] Although other surveys and administrative records may provide some demographic information, they cannot fully replace the comprehensiveness and precision of the decennial census. Eliminating race and ethnicity data from the Census would therefore weaken the government's ability to detect discrimination, enforce existing civil-rights protections, and ensure that federal programs and public resources serve all communities fairly.

B. Collecting race and ethnicity data can be accomplished without violating privacy

Amassing specific race and ethnicity data, as the Bureau has done for 236 years,[72] does not require the Bureau to publish every category at the smallest geographic level. Collection and publication are distinct questions. The Bureau can adequately maintain respondents' confidentiality while

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Data: What Federal Agencies Need to Know (Oct. 2020), https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_federal_handbook_2020.pdf

[70] *See* U.S. Census Bureau, *Understanding and Using American Community Survey Data: What Federal Agencies Need to Know* (Oct. 2020) (identifying federal agency uses of demographic data in enforcing antidiscrimination requirements in education, employment, housing, and financial assistance), https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_federal_handbook_2020.pdf

[71] U.S. Census Bureau, About the Equal Employment Opportunity Tabulation, https://www.census.gov/topics/employment/equal-employment-opportunity-tabulation/about.html (last visited Oct. 30, 2026).

[72] Race-based classification has been part of the U.S. census since 1790, when enumerators distinguished free White people, other free people, and enslaved people. Subsequent censuses introduced and revised categories for groups including Black, American Indians, Chinese, Japanese, and Mexicans; self-identification of race appeared in 1960, a separate question on Hispanic origin first appeared in 1970, and in 2000 respondents were first allowed to select more than one race. Travis Shoemaker, "As America Turns 250 Years Old, the Census Is Not Far Behind at 236," U.S. Census Bureau, June 4, 2026, https://www.census.gov/library/stories/2026/06/america-counts-250-years.html#accordion-d00b0e46e2-item-70c3d0dd3c.

simultaneously collecting detailed demographic data–publishing only the categories necessary for redistricting and Voting Rights Act enforcement at the census-block level, while reserving more granular data for larger geographics where disclosure risks may be heightened. This approach would directly address privacy concerns without stripping data that courts, enforcement agencies, and communities have consistently relied on to identify and remedy discrimination. Abandoning collection altogether would compromise essential civil-rights data when a narrower and more targeted solution is readily available.

C. Latino communities will be negatively impacted if the Bureau stops its practice of collecting race and ethnicity data

The loss of this data would be highly consequential for Latino communities, which are both a large and rapidly growing share of the Nation's population and among the populations the census has historically struggled to count accurately.[73] The Hispanic or Latino population reached 62.1 million people in 2020, representing 19 percent of the U.S. population, and accounting for 51.1 percent of the Nation's total population growth between 2010 and 2020.[74] Yet as the Latino population grew, the accuracy of its enumeration worsened.[75] The Latino undercount rate more than tripled between the 2010 and 2020 Censuses.[76] Eliminating this data further compounds these longstanding inequities, making Latino and other historically undercounted communities less visible in the Nation's demographic record while simultaneously weakening the data needed to identify discrimination and safeguard civil-rights.

Statistical erasure poses serious threats to the nation's Latino communities. Race and ethnicity are social labels justified by shared cultural norms rather than biological features. These labels are attached to social determinants that influence how Latinos experience life in the U.S., increasing or diminishing their chances for access to healthcare services, life expectancy, quality of education, and employment opportunities.[77] For example:

- **Slightly Higher Life Expectancy.** The average Latino's life expectancy is 81.3 years, higher than the national life expectancy average of 78.4 years. However, the leading causes of death for Latinos are cancer, heart disease, stroke, diabetes, and unintentional injuries –

[73] Clara Fong, et al., *Making the Census Work for Latinos*, Brennan Center for Justice (Oct. 19, 2022), https://www.brennancenter.org/our-work/analysis-opinion/making-census-work-latinos
[74] Suzanne Gamboa, *Latinos account for over half of the country's population growth*, NBC News (last updated Aug. 13, 2021), https://www.nbcnews.com/news/latino/latinos-account-half-countrys-population-growth-rcna1667
[75] Wang, *supra* note 18.
[76] Gabriel R. Sanchez, *What are the consequences of the Latino undercount in the 2020 U.S. Census?*, Brookings (Mar. 24, 2022) https://www.brookings.edu/articles/what-are-the-consequences-of-the-latino-undercount-in-the-2020-u-s-census/
[77] See generally Luisa Borrell and Anahi Viladrich, *The Hispanic/Latino Population in the United States: Our Black Identity, Our Health and Well-Being*, 114 Am. J. Pub. Health S444 (Supp. 6 2024) (July 31, 2024).

all conditions that can be delayed or overcome with access to quality health care and health insurance coverage.[78]

- **Disparity in Educational Attainment.** An estimated 73% of Latinos aged 25 or older earned a high school diploma or higher in stark contrast to 90% of the U.S. population over the age of 25. Access to quality education has been linked to strong health outcomes. People with lower educational attainment may find it more difficult to secure well-paying jobs which can impact access to health insurance and quality medical care.[79]
- **Less Health Insurance Coverage.** Roughly 83% of U.S. Latinos have health insurance coverage, less than the national average of 92% coverage among Americans. The 17% or 11.4 million uninsured Latinos are more than triple the rate for White, non-Latino Americans (around 5.2%).[80] Insurance coverage rates will continue to plummet due to several federal policy changes since the Covid-19 pandemic.[81] People without health insurance tend to lack a primary care physician and delay seeking medical treatment.[82]
- **Population Concentrated in Regions**. Latinos comprise roughly 20% or more of the population in the southwestern states (AZ, NM, NV, & TX), California, Florida, New York, New Jersey, and Puerto Rico.[83]

These statistics indicate the ten most populous Latino states and territories can expect significant need for professional and medical resources to treat acute and chronic conditions in coming years. Latinos currently live longer than the average American. However, their top causes of death largely stem from chronic health conditions. Falling access to health insurance coverage could lead to increased numbers of ailing Latinos needing access to Medicaid or Medicare to manage their healthcare needs. Additionally, research hubs like Rutgers University's Center for State Health Policy could not continue to provide credible information to New Jersey policymakers about the state's health and healthcare services, especially as it relates to the state's significant Latino communities. The Center relies on census population data to understand population needs, healthcare utilization, and distribution of healthcare resources.[84]

If the Census ceases to collect demographic information, the aforementioned disparities Latinos face will be statistically erased and politically ignored.

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[78] Ofc. of Minority Health, Hispanic/Latino Health, U.S. Dept. Health & Hum. Servs., https://minorityhealth.hhs.gov/hispaniclatino-health.
[79] *Id*.
[80] *Id*.
[81] Latoya Hill, Samantha Artiga, & Anthony Damico, Health Coverage by Race and Ethnicity, 2010-2024, KFF (May 4, 2026), https://www.kff.org/racial-equity-and-health-policy/health-coverage-by-race-and-ethnicity/.
[82] *Supra* note 76.
[83] *Supra* note 76.
[84] *See* Richard Besser, MD, RWJF Comments Opposing the Proposal to Undermine the Accuracy and Integrity of the Census, Robert Wood Johnson Foundation (Oct. 16, 2026), https://www.rwjf.org/en/insights/advocacy-and-policy/regulatory-comments/2026/10/comments-from-richard-besser-opposing-the-proposal-to-undermine-the-accuracy-and-integrity-of-the-census.html.

American Latinos also stand at the crux of harm should questions of race and ethnicity be removed. Ethnically, they identify as descendants of countries colonized by the Spanish throughout South America, Central America, and the Caribbean. But racially, their ancestry is a vibrant tableau of White, Black, Asian, and indigenous influences. Accordingly, Latinos in America can identify across nearly all racial classifications and consequently, their lives can reflect the socioeconomic pressures impacting those distinct racial groups, in addition to those they face ethnically as Latinos.[85] Afro-Latinos are a prime example. Approximately 2.2 million Americans self-identify as Afro-Latino, or Latinos with acknowledged African ancestry.[86] Demographic data demonstrates this subpopulation has higher educational attainment than non-Black Latinos but faces greater economic disadvantages. In 2019, nearly 23% of Afro-Latinos lived in poverty and 23.4% had low incomes, with median household income $47,400 annually, $5,000 lower than incomes of non-Black Latinos.[87] Additionally, Afro-Latinos are most populous along the nation's eastern seaboard with dense concentrations in Boston, Virginia Beach, Pittsburgh, and New York City where socioeconomic disparities for Latinos is felt keenly.[88] Given the salience of ethnicity and race in the U.S. and the statistical relationships between the self-reported demographics and lived experiences of U.S. residents based on, it is crucial the Census continue collecting this information. As social statistician Tukuku Zuberi, chair of the University of Pennsylvania sociology department, pointed out, deracializing statistics without a conscious effort to dismantle racial stratification is akin to putting the cart before the horse.[89]

Latin American countries currently recognize race and ethnicity questions as consequential to national censuses. For over half a century, many of these nations removed the race variable from their national censuses in pursuit of colorblind governance. Then in 2018 a report revealed the folly of such erasure. A World Bank report showed that nearly one half of Latin Americans living in poverty are of African descent. Latin American nations scrambled to reinsert race questions and

[85] Borrell & Viladrich, *supra.* note 75 at S444.
[86] Fadia Patterson, Hispanic Heritage Month spotlights Afro-Latinos as they seek visibility in 2030 Census, Spectrum Bay News 9 (Oct. 14, 2026), https://baynews9.com/fl/tampa/news/2026/10/14/hispanic-heritage-month-spotlights-afro-latinos-as-they-seek-visibility-in-00-census
[87] *Id.*
[88] *See* Misael Galdamez, Moris Gomez, et al., Centering Black Latinidad: A Profile of the U.S. Afro-Latinx Population and Complex Inequalities, UCLA (Apr. 20, 2023), https://latino.ucla.edu/research/centering-black-latinidad/; MA Latino News, Economic Barriers Facing Latino Families in Massachusetts, The Fulcrum (Oct. 5, 2026), https://thefulcrum.us/economy/boston-fed-racial-wealth-gap-massachusetts-latino-families; Pilot Online, Checkered History: For Va. Beach blacks, power still elusive, The Virginia-Pilot (Aug. 10, 2019), https://www.pilotonline.com/2009/09/08/checkered-history-for-va-beach-blacks-power-still-elusive-2/.
[89] Ricardo H. Lowe, Jr., "Trump's Proposal to End Racial Statistics Squanders the Hard-won Gains of the Civil Rights Movement," AfroLatino Forum (Oct. 27, 2026), https://www.afrolatinoforum.org/pensamientos-blog/trumps-proposal-to-end-racial-statistics-squanders-the-hard-won-gains-of-the-civil-rights-movement.

subsequent data collection revealed race "became statistically evident" in not only analyzing disparities but in directing public resources to address them.[90]

The Proposed Rule would therefore create a significant data gap that other Bureau surveys simply cannot fill. It would leave states, courts, enforcement agencies, and communities with less information to answer some of the most consequential questions about equal representation and equal treatment under federal law for U.S. Latinos.

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The Bureau cannot eliminate race and ethnicity questions from the decennial census without depriving states, courts, civil-rights enforcement agencies, and policymakers of the geographically precise population data necessary to draw lawful electoral districts, enforce the Voting Rights Act, identify and remedy racial discrimination, and assess whether federal resources are distributed equitably among communities. Eliminating these crucial data points without an adequate substitute is an unjustified change that disregards the substantial reliance of the federal and state governments, courts, civil-rights enforcement agencies, and communities on decennial census data to enforce federal civil-rights protections, draw electoral districts, and make informed decisions about resource allocation, rendering the Bureau's action arbitrary and capricious under the APA. 5 U.S.C. § 706(2)(A); *Regents of the University of California*, 591 U.S. at 30–33; *Fox Television Stations, Inc.*, 556 U.S. at 515–16.

VII. Conclusion

Census counts must ensure accuracy and fair representation, regardless of a population's contributions to the nation. Nevertheless, LULAC believes it is necessary, given the nature of this proposed rule, to remind the Bureau and the public that the United States is, and has always been, a nation of immigrants. Immigrants, citizens and noncitizens alike, have contributed and continue to contribute to the country's infrastructure, economy, and innovation.[91] Noncitizens, in particular, make meaningful economic contributions in every state across the country and contribute nearly $100 billion annually in federal, state, and local tax revenue.[92] This includes an estimated $25.7

[90] Lowe, *supra.* note 87.

[91] Over the past two decades, immigrants have fueled labor-force growth, expanded consumer demand, and strengthened industries. According to the Migration Policy Institute, an independent and nonpartisan organization, immigrants "boost overall economic growth by expanding the labor force and increasing consumer spending," starting new businesses (at higher rates than U.S.-born persons), developing 30% of patents in strategic industries, and founding 40% of the country's Fortune 500 companies.

[92] In 40 states, undocumented immigrants pay higher state and local tax rates than the top 1 percent of households. Carl Davis, Marco Guzman, and Emma Sifre, "Tax Payments by Undocumented Immigrants," Institute on Taxation and Economic Policy (July 30, 2024) https://itep.org/undocumented-imMigrants-taxes-2024/

billion in Social Security taxes and $6.4 billion in Medicare taxes, despite being ineligible for these programs.[93] Also significant, though harder to quantify, is the military service that immigrants, including noncitizens, provide to the United States, often at the risk of their own lives.

Excluding noncitizens from census counts, including a citizenship question on the census form, and eliminating self-identification of race and ethnicity from the census forms risks undermining the accuracy of population-based resource allocation, infrastructure planning, and political representation. These consequences would extend beyond noncitizens, affecting millions of U.S. citizens of all racial and ethnic backgrounds who share the same communities, neighborhoods, and schools with noncitizen immigrants. Accordingly, the proposed rule is not only unconstitutional, unlawful, impractical, and ill-advised, but would also adversely affect the lives of millions of Americans and contravene the fundamental American principle of fairness.

For all this and all the foregoing reasons above, LULAC urges the Census Bureau to withdraw the Proposed Rule. The Constitution and the Census Act require the Bureau to count the "whole number of persons in each State." For more than two centuries, this mandate has encompassed every person who lives in the United States, regardless of citizenship or legal status. Redefining "usual residence" to exclude millions of people who live in the United States would plainly violate the Constitution and exceed the Bureau's statutory authority. 5 U.S.C. § 706(2)(B)–(C).

Moreover, the Proposed Rule is also arbitrary and capricious on multiple grounds. It abandons settled practice without a reasoned explanation, disregards the Bureau's own evidence that a citizenship question and reliance on administrative records would produce racially and ethnically skewed undercounts, and eliminates race and ethnicity data essential to redistricting and civil rights enforcement. Therefore, the Census Bureau should withdraw the Proposed Rule.

[93] *Id.*