February 1, 2018

Vernon E. Curry, FOIA Officer
ATTN: FOIA Office
U.S. Census Bureau, Room 3J235
4600 Silver Hill Road
Washington, DC 20233-3700
census.efoia@census.gov

Via U.S. Mail and Email

Re: Urgent Freedom of Information Request
(Expedited Processing & Fee Waiver/Limitation Requested)

To Whom It May Concern,

Campaign Legal Center ("CLC") submits this Freedom of Information Act ("FOIA") request for all records pertaining to Arthur E. Gary's December 12, 2017 request to the Census Bureau to add a Citizenship question to the 2020 Census Questionnaire. The Census Bureau must make final decisions regarding Census questions and submit them to Congress by **March 31, 2018**. Given the national importance and urgency of this issue, we ask that the Bureau expedite processing of this request.

Background

On December 12, 2017, Arthur E. Gary, General Counsel of the Justice Management Division, wrote a letter to Ron Jarmin, Acting Director of the U.S. Census Bureau, urging him to include a citizenship question on the 2020 Census questionnaire. In this letter Gary stated, "the Department needs a reliable calculation of the citizen voting-age population in localities where voting rights violations are alleged or suspected."[1] He further opined, "the decennial census questionnaire is the most appropriate vehicle for collecting that data, and reinstating a question on

[1] Letter from Arthur E. Gary to Dr. Ron Jarmin, Dec. 12, 2017, https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html.

citizenship will best enable the Department to protect all American citizens' voting rights under Section 2." From this, he concluded, "the Department believes that decennial census questionnaire data regarding citizenship, if available, would be more appropriate for use in redistricting and Section 2 litigation than the [American Community Survey ("ACS")] citizenship estimates." However, Gary provided no probative evidence that the Department's current voting rights litigation suffers from using the ACS data available nor that adding a citizenship Census question would, on balance, improve the accuracy of available data.[2]

To the contrary, members of the communities DOJ claims to seek to protect, as well as leading voting rights experts, and former Census Bureau officials agree that adding a citizenship question, particularly at this stage in preparations, will invoke fear in immigrant communities and exacerbate the already dangerous undercount of those communities.[3] Many households in the United States include a mix of citizens, documented immigrants, and undocumented immigrants. This question will lead to a serious undercount of these households. In 2015, CLC submitted an *amicus* brief to the Supreme Court on behalf of four former directors of the Census explaining that the sum effect of adding a citizenship question "would be bad Census data."[4]

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[2] The Editorial Board, *Census 2020 Doesn't Need Citizenship Question*, USA Today, Jan. 8, 2018, https://www.usatoday.com/story/opinion/2018/01/08/census-2020-no-citizenship-question-editorials-debates/1007921001/ ("The government, moreover doesn't need citizenship data in more detail than it already gets through the ACS. The Supreme Court has ruled that political districts are to be drawn according to their number of residents, no their number of citizens. And federal spending on roads, law enforcement and other services follows similar logic.").

[3] Justin Elliot, *Trump Justice Department Pushes for Citzenhsip Question on Census, Alarming Experts*, ProPublica, Dec. 29, 2017, https://www.propublica.org/article/trump-justice-department-pushes-for-citizenship-question-on-census-alarming-experts ("'People are not going to come out to be counted because they're going to be fearful the information would be used for negative purposes,' said Steve Jost a former top bureau official during the 2010 census.") ("This is a recipe for sabotaging the census," said Arturo Vargas, a member of the National Advisory Committee of the Census and the executive director of NALEO Educational Fund, a Latino advocacy group. "When you start adding last-minute questions that are not tested — how will the public understand the question? How much will it suppress response rates?"); *see also* Priscilla Alvarez, *The Controversial Question DOJ Wants to Add to the U.S. Census*, The Atlantic, Jan. 10, 2018, https://www.theatlantic.com/politics/archive/2018/01/the-controversial-question-doj-wants-to-add-to-the-us-census/550088/ ("'I think the argument ridiculous. The Justice Department never needed or asked for that question on the short form of the census before and the enforcement of the Voting Rights Act does not need it,' said Vanita Gupta, the president and CEO of the Leadership Conference on Civil and Human Rights who ran DOJ's Civil Rights Division . . . .").

[4] Brief of Former Directors of the U.S. Census Bureau As *Amicus Curiae* In Support of Appellees at 25, *Evenwel v. Abbott,* 136 S. Ct. 1120 (2016), http://www.campaignlegalcenter.org/document/evenwel-v-abbott-supreme-court-amici-brief-clc-behalf-former-directors-us-census-bureau; Hansi Lo Wang, *Adding Citizensip Question Risks 'Bad Count' For 2020 Census, Experts Warn*, NPR, Jan. 10, 2018, https://www.npr.org/2018/01/10/575145554/adding-citizenship-question-risks-bad-count-for-2020-census-experts-warn.

CLC does not believe that the American people should be left in the dark concerning an issue that is sure to affect one of the most fundamental rights we have as Americans. It is vital that the public receive up-to-date information as soon as possible about the DOJ's request to include the citizenship question in the 2020 census. The Census Bureau must make final decisions regarding Census questions and submit them to Congress by March 31, 2018.[5] Last week, the Bureau reported that its lawyers are currently reviewing the DOJ's request.[6]

Request

CLC requests copies of the following documents pursuant to the Freedom of Information Act, 5 U.S.C. §552.

For the time period from January 20, 2017 to the present, any and all documents—including draft and final memoranda, recommendations, legal opinions, policy advisories or evaluations, educational materials, and all correspondence and communications, including emails,[7] letters, social media posts, and Twitter direct messages—within the following categories:

- Any documents to, from, or mentioning General Counsel Arthur E. Gary or Attorney General Jefferson Beauregard Sessions.

- Any documents containing the following phrases: "citizenship question," "question regarding citizenship," "Justice Management Division," "Civil Rights Division," "DOJ request," "Department of Justice request," "request to reinstate," "Section 2 litigation," "Voting Rights Act," or "vote dilution."

- Any documents that pertain to any review by Census Bureau employees of DOJ's December 12, 2017 request.

Request for Expedited Processing

Campaign Legal Center requests expedited processing of this records request. 5 U.S.C. § 552(a)(6)(E). CLC certifies that this is a true and correct statement detailing the basis for our request for expedited processing.

CLC requests expedited processing because there is an "urgency to inform the public" about the "actual or alleged federal government activity" covered by the request and CLC is an organization "primarily engaged" in "disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II); 15 C.F.R. 4.6(f)(1)(iv). Indeed, a final decision on the matter in question must be made by **March 31, 2018.** The public

[5] *Three Years to Go, Census Bureau Prepares for 2020 Census*, U.S. Census Bureau, Mar. 31, 2017, https://www.census.gov/newsroom/press-releases/2017/cb17-tps28.html.
[6] Gregory Wallace, *Census citizenship question under legal review*, CNN, Jan. 26, 2018, https://www.cnn.com/2018/01/26/politics/census-bureau-citizenship/index.html
[7] Please note that this request applies to all emails, sent and received, on governmental email addresses, as well as to all emails, sent and received, on all other email addresses and accounts used to conduct official business.

deserves access to these records before final decisions are made on this question of national importance. Further, the information requested involves "a matter of widespread and exceptional media interest," and raises "questions about the government's integrity which affect public confidence." 15 C.F.R. 4.6(f)(1)(iii).

A. Request for Expedited Processing Under 5 U.S.C. § 552(a)(6)(E)(v)(II) and 15 C.F.R. 4.6(f)(1)(iv).

CLC is primarily engaged in disseminating information to the public about actual or alleged government activity because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III); *see also*, *ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that such organizations are "representative[s] of the news media" and are "primarily engaged in disseminating information").

CLC maintains a website[8] that provides a wealth of editorial content about democracy law issues, including campaign finance, voting rights, redistricting, and ethics. CLC also publishes a regularly updated blog with original editorial and educational content,[9] and communicates its research analysis through multiple social media platforms such as Facebook, Twitter, and Medium.[10] CLC also disseminates original editorial and educational content to the public through op-eds,[11] press releases,[12] email newsletters, public reports,[13] fact sheets,[14] videos,[15] and other materials. CLC staff is frequently interviewed for news stories.[16] CLC additionally applies editorial skill to analyze and disseminate materials to other news media outlets, which regularly cite and rely upon CLC's work.

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[8] Campaign Legal Center, www.campaignlegalcenter.org.
[9] *Blog*, Campaign Legal Center, http://www.campaignlegalcenter.org/news/262.
[10] Campaign Legal Center, Facebook, https://www.facebook.com/CampaignLegalCenter/; Campaign Legal Center, Twitter, https://twitter.com/CampaignLegal; Campaign Legal Center, Medium, https://medium.com/clc-blog.
[11] *See e.g.,* Trevor Potter, *Donald Trump Hasn't Solved Any of His Conflicts of Interest,* Wash. Post, Jan. 11, 2017, https://www.washingtonpost.com/posteverything/wp/2017/01/11/donald-trump-hasnt-solved-any-of-his-conflicts-of-interest/?utm_term=.0e80b538fb8f.
[12] Press Releases, Campaign Legal Center, http://www.campaignlegalcenter.org/news/286.
[13] *See e.g.,* Make Democracy Count: Ending Partisan Gerrymandering, Campaign Legal Center (Aug. 10, 2016), http://www.campaignlegalcenter.org/document/make-democracy-count-ending-partisan-gerrymandering; Ruth Greenwood, Analysis: Partisan Gerrymandering in the 2016 Election, Campaign Legal Center (Jan. 9, 2017), http://www.campaignlegalcenter.org/news/blog/analysis-partisan-gerrymandering-2016-election; Funding the Presidential Nominating Conventions: How a Trickle of Private Money Turned Into a Flood, Campaign Legal Center (June 14, 2016), http://www.campaignlegalcenter.org/document/funding-presidential-nominating-conventions-how-trickle-private-money-turned-flood.
[14] *See e.g.*, Backgrounder: Record of Supreme Court Nominee Neil Gorsuch on Democracy Law, Campaign Legal Center (Feb. 2, 2017), http://www.campaignlegalcenter.org/news/update/backgrounder-record-supreme-court-nominee-neil-gorsuch-democracy-law.
[15] *See e.g.*, *Meet the Victims of Texas' Voter Photo ID Law*, Campaign Legal Center, Apr. 28, 2015, http://www.campaignlegalcenter.org/news/press-releases/meet-victims-texas-voter-photo-id-law.
[16] *Media Coverage*, Campaign Legal Center, http://www.campaignlegalcenter.org/news/241.

CLC is not filing this request to further its commercial interest. CLC is a nonprofit, nonpartisan 501(c)(3) organization. Any information disclosed to CLC by way of this request will be made available to the public at no cost. CLC will also use documents responsive to the request to create analytical content—from op-eds to reports to blogs—that will further educate the public about these matters.

An urgent need for expedited processing exists where the records requested touch on an issue that is "the subject of current news coverage." *Al-Fayed v. CIA*, 254 F.3d 300, 308 (D.C. Cir. 2001). The DOJ's controversial letter to the Census Bureau is a continuous source of significant news coverage and public interest since it has become public. It has garnered a great deal of public attention.[17] As discussed above, a final decision on 2020 Census questions must be made by **March 31, 2018**, when the Census must submit the questions to Congress. The public deserves access to the records discussing the DOJ's last-minute request before the matter is closed for debate.

B. Request for Expedited Processing Under 5 U.S.C. § 552(a)(6)(E)(v)(II) and 15 C.F.R. 4.6(f)(1)(iii).

CLC requests expedited processing because the requested records involve "[a] matter of widespread and exceptional media interest involving questions about the Government's integrity which affect public confidence." 15 C.F.R. 4.6(f)(1)(iii). For the reasons discussed above, it is clear that whether the Census Bureau will include a citizenship question on the 2020 census is a question of enormous media and public

[17] *See, e.g.*, Hansi Lo Wang, *Adding Citizenship Question Risks 'Bad Count' For 2020 Census, Experts Warn*, NPR, Jan. 10, 2018, https://www.npr.org/2018/01/10/575145554/adding-citizenship-question-risks-bad-count-for-2020-census-experts-warn; Justin Elliot, *Trump Justice Department Pushes for Citizenship Question on Census, Alarming Experts*, ProPublica, Dec. 29, 2017, https://www.propublica.org/article/trump-justice-department-pushes-for-citizenship-question-on-census-alarming-experts; Priscilla Alvarez, *The Controversial Question DOJ Wants to Add to the U.S. Census*, The Atlantic, Jan. 10, 2018, https://www.theatlantic.com/politics/archive/2018/01/the-controversial-question-doj-wants-to-add-to-the-us-census/550088/; The Editorial Board, *Census 2020 Doesn't Need Citizenship Question*, USA Today, Jan. 8, 2018, https://www.usatoday.com/story/opinion/2018/01/08/census-2020-no-citizenship-question-editorials-debates/1007921001/ ("Why does the administration want to ask the citizenship of every person in every home in America? The only plausible explanation is that it wants to depress participation among immigrant groups. That's not a very good answer."); Raul A. Reyes, *The Question That Could Sabotage The Census*, CNN. Jan. 2, 2018, ("[D]oes anyone seriously believe that Attorney General Jeff Sessions, head of the Department of Justice, is concerned about minority voting rights?"); Catherine Rampell, *The GOP Is Sabotaging This Sacred Mandate*, Wash. Post, Jan. 4. 2018, https://www.washingtonpost.com/opinions/tthe-gop-is-sabotaging-one-of-governments-most-sacred-mandates/2018/01/04/da27ad60-f197-11e7-b3bf-ab90a706e175_story.html?utm_term=.65f29aab81a0, "Apparently not content to shortchange funding, the administration is also taking steps that will actively decrease participation [in the census]"); Anjana Ahuja, *When Census Takin Is A Recipe For Controversy,* Financial Times, Jan. 8, 2018, https://www.ft.com/content/9cddb7d0-f456-11e7-a4c9-bbdefa4f210b.

interest that affects public confidence in the government. Indeed, it goes to the heart of the public's confidence in our democratic system of government.

Application for Waiver or Limitation of Fees

CLC requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). The requested records will provide the public with critical information.

As noted above, CLC is not filing this request to further its commercial interest. A fee waiver would further Congress' intent in providing for waivers for noncommercial requesters. *See Judicial Watch, Inc. v. Rossotti,* 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.").

CLC also requests a fee waiver on the grounds that CLC qualifies as a "representative of the news media" and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). As noted above, CLC meets the statutory and regulatory definitions of a "representative of the news media" because it is an "entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii)(III).

The D.C. Circuit has held that a requester may qualify as a news media entity if it "'distribute[s] [its] work' by issuing press releases to media outlets in order to reach the public indirectly." *Cause of Action v. FTC*, 799 F.3d. 1108, 1125-26 (D.C. Cir. 2015). Courts have found that other organizations with functionally similar missions engaged in similar public education activities qualify as "representative[s] of the news media," even if engaged in litigation or other advocacy beyond educating the public about the operations of government. *See, e.g.*, *id.* at 1121-25 (finding a public interest advocacy organization that comments to other media outlets about documents it obtains under FOIA a news media requester); *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding nonprofit public interest group that published a biweekly email newsletter a news media requester); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding "public interest law firm" Judicial Watch a news media requester).

"It is critical that the phrase 'representative of the news media' be interpreted broadly if the act is to work as expected, . . . In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.*'" 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986), cited in *Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989). Given the foregoing, there can be no doubt that CLC performs important functions as a "representative of the news media," as defined by the relevant statute and regulations.

In the event the fee waiver is not granted, CLC may not be charged for the first two hours of search time, or for the first hundred pages of duplication. Please contact me and advise me of the cost of this request if processing costs exceed $100.

Withholding of Documents

If the Department determines that any of the requested documents are exempt from disclosure, please provide a *Vaughn* index describing any such document(s) or parts of document(s) withheld; and the justification for withholding any document(s) or any part of any document(s), including the specific exemption claimed and the consequences of providing the withheld information. *See Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973); *Mead Data Central, Inc. v. U.S. Dep't of Air Force*, 566 F.2d 242, 251 (D.C. Cir. 1977) ("we require that when an agency seeks to withhold information it must provide a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply"); *King v. Dep't of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987) ("A withholding agency must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information."). For any document or record for which an exemption is claimed, please disclose any reasonably segregable non-exempt portion of the requested document or record. 5 U.S.C. § 552(b).

Conclusion

Pursuant to Department regulations, CLC expects notification of a decision on its request for expedited processing within ten days, 15 C.F.R. 4.6(f)(4). Even if expedited processing is rejected, CLC expects a response to this Request within twenty working days, as required by statute. 5 U.S.C. § 552(a)(6)(A). Thank you for your prompt attention to this matter. Where possible, please send the requested record electronically to dlang@campainglegalcenter.org. Please furnish all applicable paper records to: Danielle Lang, Campaign Legal Center, 1411 K Street NW, Suite 1400, Washington, DC 20005. If you have any questions, please contact me by email or by telephone at 202-856-7911.

Sincerely,

s/ Danielle M. Lang

Danielle Lang
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*Admitted in New York and California only; practice limited to U.S. courts and federal agencies