CAMPAIGN LEGAL CENTER

October 30, 2026

TO:
Mr. Daniel Sweeney
Deputy General Counsel for Economic, Statistical, and Regulatory Affairs
Office of the General Counsel, Department of Commerce
4600 Silver Hill Road
Designation: ADDEMO/FRN
Washington, D.C. 20746

FROM:
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RE: Campaign Legal Center's Comment Opposing the Proposed Rule: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions" (Docket No. 260903-0005; RIN 0607-AA75)

Dear Mr. Sweeney:

Campaign Legal Center ("CLC") submits this comment in opposition to the Commerce Department and U.S. Census Bureau's Notice of Proposed Rulemaking ("Proposed Rule") published September 10, 2026, titled Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions (Docket No. 260903-0005; RIN 0607-AA75).

CLC is a nonpartisan, nonprofit organization dedicated to advancing democracy through law. Through its extensive work on voting rights and redistricting, CLC seeks to ensure that every U.S. resident has an opportunity to participate in American democracy and receives fair representation at the federal, state, and local levels.

The Proposed Rule would dramatically overhaul who gets counted—and when they get counted—in the decennial census and would prohibit the use of questions about race and ethnicity—both changes that threaten the accuracy of the census count and the reliability of future census data that is used for everything from enforcement of civil rights laws to ensuring equitable distribution of trillions of federal dollars. The Census Bureau (the "Bureau") also suggests, although does not firmly assert, that it could add a question to the short-form questionnaire inquiring about respondents' immigration status.

Specifically, the Bureau proposes adding Parts 60 and 70 to Title 15 of the Code of Federal Regulations. The first addition, Part 60 (the "residence criteria"), proposes adding 15 C.F.R. § 60.4 to revise how foreign citizens living in the U.S. are counted on the census by counting only U.S.

citizens and lawful permanent residents.[1] All undocumented immigrants and other foreign citizens residing in the U.S.—including international students, work visa holders, recognized refugees and asylees, and others—would be excluded from the count.[2] The Bureau also proposes changing when enumeration occurs by scrapping Census Day (April 1) and implementing an "enumeration period."[3] That enumeration period would run from January 3 through April 1,[4] and a person's usual residence would be adjudged as the residence at which they spent the "greatest number of days" during the enumeration period.[5] The Bureau also suggests that it "could [] include" a question about legal status on the short-form decennial census questionnaire, though it does not elaborate on this suggestion anywhere else in the Proposed Rule, including in any of the proposed additions to Title 15.[6]

The second addition is Part 70, which proposes to restrict the inclusion of questions about race, ethnicity, or sexual orientation on the short-form census questionnaire or *any* census questionnaire used for enumeration, for the purpose of ensuring that such questions do not "undermine or distort the fundamental, Constitutional purpose of the decennial census."[7]

CLC strongly opposes the Proposed Rule for the following reasons:

The residence criteria are illegal and would have catastrophic practical effects. They are illegal for several reasons. First, the Proposed Rule violates Article I, Section 2 of the U.S. Constitution and the Fourteenth Amendment by excluding from apportionment populations that the Constitution plainly requires be included for enumeration. Second, the Proposed Rule violates statutory requirements—including the Census Act and the Reapportionment Act of 1929—that dictate whom the census must include for purposes of apportionment. Third, the Proposed Rule compels unlawful sampling, in violation of the Census Act. Finally, the Bureau's proposal to shift enumeration from a day (April 1) to a "census enumeration period" (January 3 to April 1) is a break from every census since 1790 and violates the Census Act.

In addition to being plainly unlawful, the residence criteria's practical impacts would be devastating. The social, political, and economic impact of excluding swaths of residents from enumeration would be catastrophic and wide-reaching, touching everything from community funding to the equal representation guaranteed by the Constitution, and would affect virtually every community in the country.

The part of the Proposed Rule that would restrict race and ethnicity questions would curtail effective enforcement of federal civil rights laws and threaten equal representation. And the Rule's justifications for such a restriction are legally mistaken, factually baseless, and pretextual.

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[1] Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 91 Fed. Reg. 57524, 57529 (proposed Sep. 10, 2026) (to be codified at 15 C.F.R. § 60.4(a)).
[2] *Id.* (to be codified at 15 C.F.R. § 60.4(b)).
[3] *Id.* (to be codified at 15 C.F.R. § 60.2(a)).
[4] *Id.* at 57526.
[5] *Id.* at 57529 (to be codified at 15 C.F.R. § 60.2(a)).
[6] *Id.* at 57526.
[7] *Id.* at 57530 (to be codified at 15 C.F.R. §§ 70.1, 70.2(a)).

Finally, the Bureau should not inquire about citizenship on the census (either the short-form questionnaire or elsewhere). Such an inquiry would be unlawful, meaningfully reduce the response rate, and threaten the efficacy of the census and reliability of its data sets.

In addition to the substantive opposition to the Proposed Rule, CLC requests that the Census Bureau extend the comment period deadline another 30 days to provide for the full 90-day comment period. Substantial proposals such as this one demand 90 days to ensure complete and robust participation in the rulemaking process.

CLC's comment further addresses the Proposed Rule's legal and practical flaws below. Parts I-II analyze the defects of the Proposed Rule's residence criteria. Part III discusses the Proposed Rule's restrictions on race and ethnicity questions. Lastly, Part IV opposes the proposal to inquire about citizenship on the census.

I. The Proposed Rule's Residence Criteria Are Illegal.

The Proposed Rule's definition of "usual residence," which excludes certain non-U.S. citizens from the decennial census, is unlawful for multiple reasons. First, this proposed change violates Article I, Section 2 and the Fourteenth Amendment of the U.S. Constitution. Second, it violates the requirements for who must be counted for apportionment in both the Census Act, 13 U.S.C. § 141, and the Reapportionment Act of 1929, 2 U.S.C. § 2a. Third, it likely requires sampling for apportionment counts, in violation of Article I, Section 2's "actual Enumeration" requirement and the Census Act's prohibition on sampling for apportionment, 13 U.S.C. § 195. In addition, setting an "enumeration period" of January 3 to April 1 to determine an individual's usual residence violates federal law (Title 13).

A. The Residence Criteria Violate Article I, Section 2 and the Fourteenth Amendment to the Constitution.

The Proposed Rule violates Article I, Section 2 and the Fourteenth Amendment to the U.S. Constitution. Because the Proposed Rule's modified residence criteria exclude undocumented immigrants and certain categories of lawfully present immigrants—including international students, work visa holders, asylees, and refugees—from the apportionment base, the Proposed Rule violates the constitutional requirement to apportion representatives based on total population.

The revised residence criteria would fully exclude undocumented immigrants and temporary lawful residents, both of whom the Constitution commands must be counted as a part of the apportionment base. Section 60.4 of the Proposed Rule seeks to relegate all foreign citizens who are neither citizens nor lawful permanent residents of the United States to be simply "[n]ot counted for apportionment."[8] Section 60.2(a) would similarly exclude undocumented immigrants and temporary lawful residents from apportionment by limiting the definition of "usual residence" to a residence at which a person has "lawfully spent the greatest number of days" during the relevant period and requiring said residence to be supported by tax records.[9]

[8] *Id.* at 57529 (to be codified at 15 C.F.R. § 60.4(b)).
[9] *Id.* (to be codified at 15 C.F.R. § 60.2(a)).

The U.S. Constitution precludes such a change in the census: it explicitly dictates that every U.S. resident—regardless of immigration status—must be counted for purposes of congressional representation. Article I requires an "actual enumeration" every ten years, followed by apportionment based on a population formula that does not account for immigration status.[10] The Fourteenth Amendment further provides: "Representatives shall be apportioned among the several States according to their respective numbers, *counting the whole number of persons in each State*, excluding Indians not taxed."[11] In *Evenwel v. Abbott*, the Supreme Court held that these constitutional provisions "retained total population as the congressional apportionment base."[12] This "decision to count people, *whether or not they qualify as voters*," reflects a "principle of representational equality."[13]

In support of the Proposed Rule, the Bureau claims that "the term 'persons' as used in the Apportionment Clause of Article I, Section 2, was deliberately chosen instead of 'citizens,' to reflect the Three-Fifths compromise but nonetheless was largely informed by (and synonymous with) the term 'inhabitants,' which was historically understood to refer to members of the body politic."[14] As evidence, the Bureau notes that, at the time of the Founding, "an alien could not qualify as an 'inhabitant' . . . without establishing a residence within a jurisdiction and an intent to remain there indefinitely."[15] The Bureau also claims, without support or legal citation, that passage of the Fourteenth Amendment did not otherwise alter this understanding of the term "person."[16] The Bureau concludes that undocumented immigrants and lawful temporary residents are neither inhabitants nor members of the body politic "due to their lack of a sufficient tie and allegiance to the United States," and thus should be excluded from the apportionment count.[17]

Aside from contradicting the plain language of Article I and the Fourteenth Amendment, these arguments stand in stark contrast to circumstances in which both were passed, as well as the intent behind them. To begin, there was no such concept as illegal immigration at the time of the Founding. Indeed, there were no residency requirements in the United States at all before the passage of the Immigration Act of 1875, and thus no way to be unlawfully residing in the country prior to that time.[18]

There is also clear evidence that early censuses counted all immigrants to the United States and used those counts for apportioning representatives. The Census Act of 1790, which provided for the first taking of the census, "listed the head of household, and counted:" "free White males

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[10] U.S. Const. art. I, § 2.
[11] U.S. Const. amend. XIV, § 2 (emphasis added).
[12] 578 U.S. 54, 67 (2016).
[13] *Id.* at 69 (emphasis added).
[14] 91 Fed. Reg. at 57525.
[15] *Id.* at 57525-26.
[16] *Id.* at 57526.
[17] *Id.*
[18] *See* Act of March 3, 1875, 43 Cong. ch. 141, 18 Stat. 477; *Kleindienst v. Mandel*, 408 U.S. 753, 761 (1972) ("Until 1875 alien migration to the United States was unrestricted."); Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 Colum. L. Rev. 641, 643 (2005) ("In 1875, Congress passed the first federal restrictive immigration statute."). Prior to the Immigration Act of 1875, an individual could only face arrest or deportation if they were a citizen of a country actively at war with the U.S., *see* 50 U.S.C. §§ 21-24, or if they were a noncitizen planning an insurrection against the United States. An Act Concerning Aliens, (Aliens Act), 5 Cong. ch. 58, 1 Stat. 570 (1798).

age 16 and over, and under 16" "free White females," "*all other free persons*," and "how many slaves there were."[19] Further evidence that immigrants of all kinds were being counted appears in the 1820 census, which included an inquiry as to "the numbers of foreigners not naturalized" in a given household.[20]

The debates in Congress regarding the Fourteenth Amendment also strongly indicate that Congress intended for the term "persons" to be broadly interpreted. The record is clear that the Reconstruction Congress's choice to use the word "persons" in the Fourteenth Amendment was neither capricious nor random. In fact, the congressional record lists multiple failed efforts to base apportionment on "voters" or "citizens."[21] Perhaps most notable are the words of Representative John Bingham, who stated that it would be unwise to "strike from the basis of representation the entire immigrant population not naturalized," observing 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."[22]

The Bureau's proffered interpretation of "persons" as used in the Fourteenth Amendment is further undercut by U.S. Supreme Court precedent. The Court has long held that the term "person" as used in the Fourteenth Amendment's Equal Protection Clause applies to both non-citizens[23] and undocumented immigrants.[24] Indeed, the Court has rejected the suggestion that unlawful presence deprives someone of being a "person" under the law, holding that "[w]hatever his status under the immigration laws, an alien is surely a 'person' in any ordinary sense of that term."[25] The Fourteenth Amendment's Citizenship Clause likewise distinguishes between "persons" and "citizens."[26] There is no basis to assume that the use of the same word elsewhere in the Amendment possesses a different meaning.

The Bureau also claims legal authority to exclude undocumented immigrants and lawful temporary residents from the apportionment count under, *inter alia*, *Franklin v. Massachusetts*, 505 U.S. 788 (1992). That case challenged the Bureau's expansion of the term "usual residents" to include employees of the Department of Defense stationed overseas (beginning with the 1990 census). The U.S. Supreme Court "confirmed that it was within the agency's discretion to make such a residency determination."[27] The Bureau cites the Court's determination that "[t]he term ['usual residence'] can mean more than mere physical presence," and its conclusion that the

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[19] U.S. Census Bureau, *Factfinder for the Nation: History and Organization* 1 (May 2000), https://perma.cc/9EW5-5GKT (emphasis added).
[20] Carroll D. Wright & William O. Hunt, *History and Growth of the United States Census*, S. Doc. 56-194, at 26 (1900).
[21] George David Zuckerman, *A Consideration of the History and Present Status of Section 2 of the Fourteenth Amendment*, 30 Fordham L. Rev. 93, 96, 100-01 (1961); *see also* 17 Cong. Globe, 39th Cong., 1st Sess. 359 (1866).
[22] David H. Gans, *The Cornerstone of Our Democracy: The Census Clause and the Constitutional Obligation to Count All Persons*, Const. Accountability Ctr., at 8 (Mar. 19, 2018), https://perma.cc/X3PZ-S98R (emphasis added); *see also* 45 Cong. Globe, 39th Cong., 1st Sess. 404, at 432 (1866).
[23] *See Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).
[24] *See Plyler v. Doe*, 457 U.S. 202, 210 (1982).
[25] *Id.*
[26] *See Trump v. Barbara*, 146 S. Ct. 2438, 2449 (2026) (holding that "persons" born on U.S. soil are "citizens" within the meaning of the Citizenship Clause).
[27] 91 Fed. Reg. at 57525.

Secretary of Commerce's judgment was made "consonant with, though not dictated by, the text and history of the Constitution."[28]

According to the Bureau, this authority has been used multiple times in recent history to create a "set of residence criteria [that] contain[s] specific rules for, among other groups, college students, incarcerated individuals, overseas military personnel, and foreign citizens present in the United States."[29] The Bureau specifically notes the residence criteria for the 2020 census, which included foreign citizens "living in" the United States, but excluded foreign citizens who were "visiting" the United States, "such as on a vacation or business trip."[30] The Bureau claims this same authority, affirmed under *Franklin*, makes the Proposed Rule "a lawful and appropriate exercise of the Census Bureau's discretion."[31]

But none of the examples cited in the Bureau's argument suggests that its authority under *Franklin* can be used to *exclude* an entire category of persons living or residing in the United States from apportionment, as the Bureau now seeks to do. Rather, it has only been used to either (1) expand the definition to include new groups of persons, as with overseas military personnel and federal employees, or, (2) to clarify *where* a certain category of persons should be counted, as with college students, incarcerated individuals, and foreign citizens living in the United States. That is, nothing in *Franklin* provides support for the idea that a category of persons residing in the United States can be excluded from apportionment. Indeed, the Court noted that the Secretary's inclusion of Department of Defense employees stationed overseas in apportionment did not "hamper the underlying constitutional goal of equal representation," but "actually promote[d] equality."[32]

What's more, the U.S. Supreme Court specifically noted in *Franklin* that the Census Bureau's decision was upheld because it was "consonant with . . . the text and history of the Constitution."[33] As discussed at length above, the Proposed Rule is antithetical, rather than consonant, to "the text and history" of Article I, Section 2, and the Fourteenth Amendment. As such, *Franklin* lends no credence to the Census Bureau's argument and does not support the Proposed Rule.

The Census Bureau thus lacks the authority to exclude undocumented immigrants and temporary lawful residents from the apportionment base in violation of Article I, Section 2 and the Fourteenth Amendment, and thereby lacks the authority to implement the Proposed Rule.

B. The Residence Criteria Violate the Census Act and the Reapportionment Act of 1929.

In addition to flouting the Constitution, the Proposed Rule also violates the Census Act and related laws dictating who must be counted decennially for apportionment. The Constitution vests Congress with the authority to conduct the decennial census "in such Manner as they shall by Law

[28] *Id.* (citing *Franklin*, 505 U.S. at 803-06).
[29] *Id.*
[30] *Id.*
[31] *Id.* at 57526.
[32] *Franklin*, 505 U.S. at 806.
[33] *Id.*

direct."[34] Congress has exercised that authority in 13 U.S.C. § 141 and 2 U.S.C. § 2a to direct that the decennial census for apportionment be based on the "total population," or the "whole number of persons," in each State. The Proposed Rule's categorical exclusion of undocumented immigrants and lawful temporary residents from that total is contrary to law.

The statutory framework is straightforward. Section 141(a) directs the Secretary to conduct the "decennial census of population."[35] Subsection (b) then requires the Secretary to report to the President "[t]he tabulation of total population by States" under the decennial census for congressional apportionment.[36] Section 2a(a), in turn, requires the President to transmit to Congress "a statement showing the whole number of persons in each State . . . as ascertained under the . . . decennial census of the population" along with the number of Representatives to which each State is entitled.[37]

Read together, these provisions disallow the Census Bureau's proposed exclusion. Section 141 calls for the Secretary to report a single set of numbers for apportionment—the "tabulation of total population by States" under the decennial census—and Section 2a makes clear that this tabulation indicates "the whole number of persons in each State." Congress did not direct the Secretary to report each State's *citizen* population, *lawful-resident* population, or *lawful permanent resident* population; it directed the count of *total* population, which is the "whole number of persons."

The Bureau cannot escape this mandate by reading "persons" more narrowly than its ordinary meaning. Congress has by law confirmed that "person" encompasses every individual, without regard to citizenship or immigration status. The Dictionary Act defines "person" to include "individuals" without qualification.[38] The Administrative Procedure Act (APA), under which the Proposed Rule proceeds, likewise defines "person" to include "an individual," without reference to legal status.[39] Most tellingly, the Immigration and Nationality Act (INA), the very statute defining both lawful and unlawful presence, defines "alien" as "any *person* not a citizen or national of the United States."[40] Thus, the "illegal aliens" ("among others"[41]) the Proposed Rule seeks to exclude as non-persons are in fact, according to Congress and plain language, persons.

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[34] U.S. Const. art. I, § 2, cl. 3.
[35] 13 U.S.C. § 141(a).
[36] *Id.* § 141(b).
[37] 2 U.S.C. § 2a(a).
[38] 1 U.S.C. § 1.
[39] *See O'Rourke v. U.S. Dep't of Just.*, 684 F. Supp. 716, 718 (D.D.C. 1988) ("Congress thus distinguishes between a 'citizen' and 'any person' when it wishes to do so.") (holding the term "any person" in FOIA includes non-citizens).
[40] 8 U.S.C. § 1101(a)(3) (emphasis added).
[41] The Bureau twice references lawful temporary residents as "others," while only substantively discussing undocumented immigrants. *See* 91 Fed. Reg. at 57526. The Proposed Rule describes lawful temporary residents as "aliens whose legal status is less durable and indefinite in length than lawful permanent resident status." *Id.* The Bureau offers no explanation of *why* the durability or definiteness of residency should implicate a lawful temporary resident's enumeration and inclusion in apportionment.

The legislative history of 2 U.S.C. § 2a supports this reading. When Congress in 1929 enacted its phrase "whole number of persons in each State," both chambers "considered and rejected amendments that would have excluded non-citizens from the apportionment base."[42]

Congress has also made clear that "total population" is distinct from citizen or citizen voting-age population, and it has used the latter deliberately when intended. Section 203 of the Voting Rights Act, for example, predicates language-assistance coverage on whether "more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and are limited-English proficient," or "more than 10,000 of the citizens of voting age of such political subdivision" meet that description.[43] Congress further directed that this determination be "based on the [] American Community Survey census data . . . in 5-year increments, or comparable census data"—a dataset distinct from the decennial census.[44] When Congress wants a count limited by citizenship or immigration status, it says so expressly. In the laws directing decennial apportionment counts, it did the opposite, directing a tabulation of *total* population.

Courts have also consistently treated "total population" as an apportionment base distinct from narrower measures like citizenship counts.[45]

Finally, the legislative record demonstrates that Congress understands the current statutes to require counting undocumented immigrant residents and lawfully present temporary residents, because members have repeatedly introduced legislation to change it, and none has become law.[46] The Executive Branch's prior effort to achieve the same end by presidential memorandum in 2020 likewise never took effect.[47] The Bureau now seeks to accomplish by administrative fiat what the President could not accomplish through executive action and what Congress has refused to do.

In sum, Congress has required that "total population"—the "whole number of persons in each State"—be counted in the decennial census and serve as the basis for congressional apportionment, *not* total population minus the undocumented immigrant and lawful temporary resident populations. The Proposed Rule's categorical exclusion of these residents of each State is therefore contrary to law, and the Bureau lacks authority to adopt it.

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[42] *New York v. Trump*, 485 F. Supp. 3d 422, 475 (S.D.N.Y. 2020), *vacated and remanded on other grounds*, 592 U.S. 125 (2020) (citing legislative adoption and then removal before passage of requirement for the President's statement to Congress to show "the whole number of persons in each State, exclusive of aliens and excluding Indians not taxed").
[43] 52 U.S.C. § 10503(b)(2)(A).
[44] *Id.*
[45] *See Kirkpatrick v. Preisler*, 394 U.S. 526, 534 (1969) (distinguishing total population from eligible voter population); *Evenwel*, 578 U.S. at 67, 73-74 (examining constitutional history and finding that the Fourteenth Amendment retains the use of total population for congressional apportionment and rejecting the argument that jurisdictions must use voter-eligible population rather than total population for purposes of satisfying the one person, one vote rule).
[46] *See, e.g.*, Making American Elections Great Again Act, H.R. 4798, 119th Cong. (2025); Equal Representation Act, H.R. 151, 119th Cong. (2025).
[47] *See Trump v. New York*, 592 U.S. 125 (2020) (per curiam).

C. The Residence Criteria Violate Article I, Section 2's "actual Enumeration" Requirement and the Census Act's Prohibition on Sampling for Apportionment Counts.

The Proposed Rule also likely compels a violation of the Census Act's ban on sampling for apportionment counts. The Constitution requires an "actual Enumeration."[48] And the Census Act provides that the Secretary can use sampling to execute certain portions of the Act, but not for determining apportionment.[49]

The Proposed Rule's exclusion of undocumented residents and lawful temporary residents would likely rely on some measure of unlawful sampling. The decennial census does not, and has never, collected sufficient information to determine the immigration status of each enumerated person. The Bureau does not have a means of identifying undocumented status on a person-by-person basis, and the Proposed Rule does not claim otherwise. Instead, the Census Bureau concedes that it has not yet determined "how best to distinguish between foreign citizens in the United States who are counted for apportionment and those who are not counted for apportionment."[50] The Census Bureau goes on to suggest it has the capacity to use administrative records from other agencies and "third-party commercial data."[51]

The Bureau does not adequately explain how it could possibly assemble and link records from such a wide array of agencies to individual census responses, leaving open only the possibility that the Bureau will unlawfully rely on sampling. It does not explain what "third-party commercial data" it would use. Nor does it explain how it would guarantee the accuracy and reliability of administrative records used to estimate a person's citizenship or immigration status. Even if one-to-one matches were possible, such records can at most confirm that a given enumerated person *is* a citizen or lawful resident. They cannot definitively establish that a person is *not* a citizen or lawful resident. In other words, a person who the Bureau cannot match to administrative records is not necessarily an undocumented immigrant. The person may be a citizen whose records failed to match due to faulty match criteria or technical error, or a lawful resident whose status is held by an agency outside the Bureau's data-sharing agreements, or simply a person whose name, address, or date of birth was recorded differently across databases.

For the many people the records will fail to resolve, the Census Bureau will have to make a decision. It can count them, as the Constitution and the Census Act require. It can treat the absence of a matching record as proof of unlawful presence, which would violate the enumeration requirement and even exclude the citizens and lawful permanent residents the Census Bureau itself seeks to count. Or it can estimate immigration status, which necessarily involves some form of statistical sampling and inference—*e.g.*, using the known status and characteristics of a subset of people to assign a probable status to each unmatched person, or to infer the status of the unmatched population as a whole, and then adjusting the apportionment count.

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[48] U.S. Const. art. I, § 2.
[49] 13 U.S.C. § 195; *Dep't of Com. v. U.S. House of Representatives*, 525 U.S. 316, 343 (1999).
[50] 91 Fed. Reg. at 57526.
[51] *Id.*

In short, the Census Bureau under the Proposed Rule will inevitably be determining the apportionment population through statistical inference rather than through actual enumeration, in violation of 13 U.S.C. § 195 and Article I, Section 2.

D. The Proposed Rule Violates the Census Act's Requirement that Census Day be April 1.

Since 1790, the enumeration day for the census has been on April 1. And for good reason. The Census Act clearly defines the day on which the Bureau shall take the decennial census as April 1.[52] The Bureau now proposes to scrap an enumeration day and, instead, measure a respondent's residency based on where they spend the greatest number of days—a day being measured as at least one hour of physical, lawful presence at a residence[53]—during the enumeration period of January 3 to April 1.[54] The Proposed Rule plainly violates the Census Act's mandate that enumeration shall measure a person's residency based on where they live on April 1—not across a nearly four-month period of time.

II. The Impact of Removing Undocumented Immigrants and Lawful Temporary Residents from the Decennial Census Would be Widespread and Catastrophic to Communities Across the United States.

The social, political, and economic impact of removing undocumented immigrants and lawful temporary residents from enumeration in the census would be catastrophic for at least two reasons. First, the Proposed Rule threatens representative government. Second, the Proposed Rule threatens the delivery of government benefits and services.

First, representative government requires accurate apportionment. Excluding millions of individuals from the census count will threaten communities' rights to be adequately and equally represented in Congress, and the downstream effects of that lost representation are myriad. It would also impact some states disparately in comparison to others.[55] In addition to the federal representative harm, state and local representation would be degraded because states and localities use census data to devise their own constitutionally and statutorily compliant legislative districts. This representative harm is not illusory. Although lawful temporary residents and noncitizens may not vote, they are otherwise entitled to participate in democracy, including by using constituent services offered by their federal, state, or local representative. And other community members—including U.S. citizens and lawful permanent residents—share in the representative harm when their community loses federal, state, or local representation due to community undercounts on the census. The right to be represented is thus severely threatened by the Proposed Rule and will have tangible, wide-reaching impacts on the daily lives of those excluded from the Census count and their surrounding communities.

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[52] 13 U.S.C. § 141(a).
[53] 91 Fed. Reg. at 57529 (to be codified at 15 C.F.R. § 60.2(b)).
[54] *Id.* (to be codified at 15 C.F.R. § 60.2(a)).
[55] Jeff Adelson and Albert Sun, *Trump's Census Proposal Could Cut House Seats From Red States*, N.Y. Times (Sept. 18, 2026), https://www.nytimes.com/interactive/2026/09/19/us/trump-census-immigrants-red-states.html.

Second, the Proposed Rule threatens the accurate, equitable allocation of trillions in federal dollars to local communities.[56] "The population count derived from the census is used . . . to allocate federal funds to the States,"[57] and the census ultimately serves as the "linchpin of the federal statistical system." [58] Federal education, healthcare, nutrition assistance, housing assistance, and much more rely upon an accurate census count.[59] As the Bureau itself asserted in 2023, "the Decennial Census Programs data are often a critical information source for entities to distribute and determine federal funding for hundreds of assistance programs," and, importantly, "[p]articipating in a Census Bureau census or survey can make a difference in the amount of federal funding federal assistance programs allocate across the country."[60] There are countless ways in which the census impacts funding for communities, such as defining which communities or municipalities are eligible for transportation dollars or allocating Medicaid payments.[61] While the impact of lost funding is difficult to assess in advance, the Proposed Rule will undoubtedly reduce federal funding for certain communities whose population will be undercounted because of the Bureau's proposed exclusion of whole swaths of residents. These impacts will ripple through communities and create disastrous economic, social, and community outcomes. To avoid such catastrophic downstream effects, the Bureau should abandon the Proposed Rule.

III. The Proposed Removal of Race and Ethnicity Questions Would Curtail Enforcement of Federal Civil Rights Laws and the Reasons for Removal are Legally Mistaken, Factually Baseless, and Pretextual

The Bureau proposes to prohibit the use of questions about race or ethnicity on the decennial census short-form questionnaire or on any census questionnaire used for apportionment.[62] The reasons offered in support of the proposed prohibition are, as discussed below, insufficient to justify this drastic change.

A. Accurate Race and Ethnicity Data Are Necessary to Ensure that All Americans Are Provided Fair Representation and Equal Access to the Democratic Process.

Accurate data on the racial and ethnic composition of the United States are essential for ensuring compliance with federal and state laws guaranteeing fair representation and equal voting rights. Data from the decennial census and the American Community Survey ("ACS")[63] are frequently used for this purpose by all stakeholders in the electoral process, including redistricting

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[56] *See* Lauren Miller Karalunas, *Excluding Immigrants from the Census Would Hurt the Country and Break the Law*, Brennan Ctr. for Just. (Sep. 18, 2026), https://perma.cc/BV9B-JLW5.
[57] *Dep't of Com. v. New York*, 588 U.S. 752, 759-60 (2019).
[58] *Id.* at 770 (quoting *Dep't of Com. v. U.S. House of Representatives*, 525 U.S. at 341).
[59] *See* Marisa Hotchkiss & Jessica Phelan, *Uses of Census Bureau Data in Federal Funds Distribution: A New Design for the 21st Century*, U.S. Census Bureau 10 (Sep. 2017), https://perma.cc/29XL-9ND3.
[60] Ceci Villa Ross, *Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021*, U.S. Census Bureau 2 (June 2023), https://perma.cc/H535-HFDN.
[61] *See* Hotchkiss & Phelan, *supra* note 59 at 10.
[62] 91 Fed. Reg. at 57527.
[63] The ACS is an ongoing survey conducted by the Census Bureau since 2005. The ACS collects detailed social, economic, housing, and demographic information—on more than 40 topics in total—from a sample of U.S. households. *See* U.S. Census Bureau, *American Community Survey (ACS)*, https://perma.cc/DH47-THQK (last visited Oct. 29, 2026).

authorities, election administrators, community organizations, voting rights advocates, and the courts.

As an initial matter, data from the decennial census and the ACS are the starting point for the redistricting process at the state and local levels. Every decade, the Census Bureau sends to each state a set of detailed population counts known as the redistricting or P.L. 94-171 file, which includes, among other things, data on race and Hispanic origin at the census block level.[64] Estimates of citizen voting age population by race and Hispanic origin at the block level are provided in the ACS. Redistricting authorities in each state use these data sources to draw congressional and state legislative redistricting plans, as well as plans for county and city councils, school boards, and other governing bodies.

Race and ethnicity data from the census and ACS are the principal datasets used to comply with Section 2 of the Voting Rights Act of 1965 ("VRA"), which prohibits any voting practice or procedure, including a redistricting plan, that results in a denial or abridgement of the right to vote based on race, color, or membership in a language minority group.[65] Section 2 may require a state or locality to draw one or more districts that provide a particular racial or ethnic minority an equal opportunity to elect their preferred candidates. Often, but not always, these are "majority-minority" districts where the protected racial or ethnic group comprises the voting majority.[66] The VRA only requires such districts if three preconditions are met: (i) the minority group is sufficiently large and geographically compact to form a majority in a district, (ii) the minority group is politically cohesive, and (iii) the minority's preferred candidates are usually defeated by majority bloc voting.[67] Plaintiffs challenging a failure to draw a district required by the VRA must also show that the challenged plan improperly dilutes the minority group's voting power, based on the "totality of the circumstances."[68] Section 2's component inquiries all depend on accurate race and ethnicity data from the decennial census.

Louisiana v. Callais, 608 U.S. 85 (2026), does not diminish the need for accurate race and ethnicity data. To the contrary, because Section 2 claims continue to turn on whether a minority population is sufficiently numerous and geographically concentrated and whether minority voters possess an equal opportunity to elect candidates of choice, accurate demographic data remains foundational to the statute's operation. Other evidence relevant to proving a "strong inference of intentional discrimination" under Section 2's "updated" framework—such as computer-simulated map ensembles—also depend on accurate census-reported race and ethnicity data.[69] Communities that are undercounted, inaccurately classified, or not counted at all under the proposed change will find it impossible to demonstrate vote dilution or obtain an effective remedy under Section 2. Thus, the continued enforcement of Section 2 is dependent on and only heightens the importance of collecting race and ethnicity data that accurately reflects the population.

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[64] *See* 13 U.S.C. § 141; U.S. Census Bureau, *Decennial Census P.L. 94-171 Redistricting Data* (Nov. 29, 2023), https://perma.cc/B48K-8TTX.
[65] 52 U.S.C. § 10301.
[66] *Cooper v. Harris*, 581 U.S. 285, 301 (2017).
[67] *Thornburg v. Gingles*, 478 U.S. 30 (1986).
[68] *Id.* at 46-49.
[69] *Callais*, 608 U.S. at 122, 126.

The census's race and ethnicity data are also needed to comply with state redistricting laws mandating racial equality and respect for communities of interest. Several states have constitutional provisions that protect voters from racial vote dilution independently from the federal VRA.[70] Eleven states have enacted state voting rights acts ("state VRAs") prohibiting racial vote dilution and voter suppression in local government elections.[71] And at least 20 states require redistricting authorities to draw electoral districts in a manner that preserves communities of interest ("COIs") with shared legislative needs and concerns.[72]

Apart from the redistricting process, census race and ethnicity data are also vital for assessing whether election rules and procedures comply with laws barring vote suppression and denial, such as the Fourteenth Amendment, the federal VRA, and similar state and local laws.[73] These laws require policymakers and election administrators to consider, among other things, whether their voting rules or procedures place disparate burdens on any racial or ethnic group's ability to cast a ballot. For example, election administrators weighing the closure, relocation, or consolidation of polling places or ballot drop boxes should examine whether their actions would disproportionately hinder a racial or ethnic group's ballot access. This analysis often depends on accurate census and ACS data showing the geographic distribution of all potentially impacted racial and ethnic groups in the area, and the socioeconomic realities affecting their respective opportunities to vote. When election administrators fail to regulate themselves, communities depend on this data to advocate for more equitable election rules in courts and legislatures.[74]

Finally, race and ethnicity data from the ACS are important for identifying jurisdictions that must provide election-related language assistance under Section 203 of the federal VRA and analogous provisions of state VRAs and other state laws. Section 203 defines "language minority groups" as persons who are of American Indian, Asian American, Alaska Native, or Hispanic origin.[75] If eligible voters from these language minority groups with limited English proficiency meet a certain population threshold in a state, county, or county subdivision, then that jurisdiction must provide language assistance during elections to those groups.[76] The Bureau must make these calculations every five years based on ACS language ability and race/ethnicity data.[77] Given the

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[70] *See, e.g.*, Colo. Const. art. V, § 44.3(4)(b) (prohibiting racial vote dilution separate from the federal VRA); Mo. Const. art. III, § 3(b)(2) (same).

[71] These states include California, Washington, Oregon, Virginia, New York, Connecticut, Minnesota, Colorado, Maryland, Delaware, and New Jersey. *See* Campaign Legal Ctr., *State Voting Rights Acts*, https://perma.cc/568A-7KPC (last visited Oct. 29, 2026).

[72] *See Redistricting Criteria*, Nat'l Conf. of State Legislatures (July 16, 2021), https://www.ncsl.org/elections-and-campaigns/redistricting-criteria. *See also Carstens v. Lamm*, 543 F. Supp. 68, 91 (D. Colo. 1982) ("[A] plan which provides fair and effective representation . . . must identify and respect the most important communities of interest in the state.").

[73] Nine states have enacted state VRAs that provide a civil cause of action for racial voter suppression in addition to racial vote dilution: California, Washington, Virginia, New York, Connecticut, Minnesota, Colorado, Delaware, and New Jersey.

[74] *See, e.g.*, Campaign Legal Ctr., *Victory! Early Voting Site Will Be Established on Arizona Tribe's Reservation* (Aug. 16, 2021), https://perma.cc/4KNB-AXPG (last visited Oct. 29, 2026); Campaign Legal Ctr., Community Preclearance: Advocacy Tools for In-Person Voting, https://campaignlegal.org/sites/default/files/2022-02/Advocacy%20Tools%20for%20In%20Person%20Voting%201.21.2022.pdf (last visited Oct. 29, 2026).

[75] 52 U.S.C. § 10503(e).

[76] 52 U.S.C. § 10503(b)(1)-(2); *see also* U.S. Census Bureau, *Section 203 Language Provisions of the Voting Rights Act* (Dec. 28, 2022), https://perma.cc/S46B-G65Z.

[77] 52 U.S.C. § 10503(b)(2)(A).

need to calculate population thresholds for ethnic groups with significant language diversity, accurate subgroup data are important, especially for Asian American subgroups and Latino/Hispanic ethnic subgroups that may speak languages other than Spanish (*e.g.*, Latinos of indigenous origin).

In short, the health and protection of American democracy depends on race and ethnicity data that accounts for all the racial and ethnic groups that may be entitled to legal remedies and affirmative protection under federal and state voting rights laws. These data are necessary to uncover and remedy unlawful racial disparities in political representation and voting access. When a racial or ethnic group is severely undercounted, it can be difficult or impossible for that group to understand its share of the electorate, identify socioeconomic factors bearing on its members' ability to participate in the democratic process, and ultimately determine whether its members have been deprived of fair representation or equal access to the ballot in violation of federal or state law. Undercounts, in other words, tend to make voting rights laws less effectively enforceable.

The Proposed Rule's suggestion that race and ethnicity data can be collected through the ACS instead of the decennial census ignores the Census Bureau's longstanding reliance on the decennial census as the foundation for ACS estimation.[78] ACS produces estimates rather than a complete count and relies on weighting, benchmarking, and population controls derived from the decennial census. Eliminating race and ethnicity questions from the decennial census would therefore not simply remove one source of race data; it would undermine the accuracy of the ACS race and ethnicity estimates themselves. Because ACS estimates are calibrated against decennial census benchmarks, inaccuracies or omissions in decennial race and ethnicity data would propagate throughout the ACS data products on which jurisdictions, researchers, and courts rely. As a result, the Proposed Rule threatens to impair both the nation's primary source of race and ethnicity data and the survey instruments that depend upon it.

B. The Census Bureau's Justifications for Removing the Race and Ethnicity Questions Are Legally Mistaken, Factually Baseless, or Pretextual.

1. "Race and ethnicity data is not necessary for the Constitution's core purpose of the census."

The Constitution requires an "actual Enumeration," but Congress has long directed the Census Bureau to collect information beyond a simple headcount. As the Supreme Court recognized in *Department of Commerce v. New York*, demographic questions have been asked in every census since 1790, and Congress has broadly authorized the Secretary to obtain additional census information.[79] The existence of a constitutional minimum does not imply a constitutional maximum. As a result, the Census Bureau can ask about race and ethnicity without issue, regardless of whether this information is necessary to the census.

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[78] The ACS, including for its race and ethnicity estimates, uses annual population estimates produced by the Population Estimates Program ("PEP") as population controls, and PEP's annual estimates are produced based on adjustments to the decennial census results. *See* U.S. Census Bureau, *Population Controls for the 2023 ACS* (Sep. 2024), https://perma.cc/2D8K-GQQJ; Eric Jensen & Christine Hartley, *Annual Updates to the Data and Methodology Used to Produce Population Estimates*, U.S. Census Bureau (Jan. 15, 2026), https://perma.cc/AFY2-XMCB.

[79] *Dep't of Com.*, 588 U.S. at 769.

The Proposed Rule incorrectly treats constitutional necessity as the measure of statutory permissibility. The question is not whether race and ethnicity data are strictly necessary to accomplish the Constitution's minimum requirement of apportionment. The census has never been confined to a simple population tally. For more than two centuries, Congress has required the collection of demographic information beyond simply counting the population, recognizing that census data serves numerous governmental functions beyond apportionment.[80] The relevant question is therefore whether race and ethnicity data serve important governmental purposes. They plainly do. For example, federal and state enforcement of voting rights, equal employment protections, and fair housing access expressly depend upon demographic data collected by the Census Bureau.[81]

Moreover, many longstanding census questions are not strictly necessary to determine the total population for purposes of congressional apportionment. Yet Congress has long exercised its constitutional authority to obtain additional information through the census to inform policymaking, administer federal programs, and enforce federal law, even if that data was not indispensable to counting the population. For example, the earliest censuses classified persons by age and sex, rather than merely recording total population, and Congress subsequently expanded the census to collect information concerning manufacturing, agriculture, occupations, housing, and other demographic characteristics.[82] These inquiries were not necessary to calculate each state's population for representation in Congress, but rather reflected Congress's judgment that census data should inform policymaking and administration.

2. "Fewer questions should increase response rates."

The Proposed Rule assumes that eliminating race and ethnicity questions will increase participation, but it does not identify any evidence demonstrating that these questions materially suppress response rates. Nor is it likely that omitting the one or two race and ethnicity questions that have always appeared on the decennial census form would appreciably increase response rates. Given the longstanding inclusion of race questions on the decennial census and the substantial governmental reliance interests associated with those data, the agency must provide empirical support for its assumption and explain why alternative approaches would be inadequate.

Even if this unsupported assumption had some truth, any marginal gain in response rates would not offset the loss of information that Congress, federal agencies, state governments, researchers, and courts rely upon. The relevant question is not simply whether more people will return the census form, but whether the census will continue to generate data necessary to carry

[80] *See supra* Sections II, III.A.
[81] *See supra* Section III.A.; Eric Slud *et al.*, *Statistical Methodology (2021) for Voting Rights Act, Section 203 Determinations*, U.S. Census Bureau (Dec. 20, 2022), https://www.census.gov/library/working-papers/2022/adrm/RRS2022-06.html; The Leadership Conf. Educ. Fund, Fact Sheet: The American Community Survey and Civil Rights (Aug. 31, 2017), https://perma.cc/7EXW-ZE8G.
[82] U.S. Census Bureau, *Factfinder for the Nation: History and Organization* 3 (May 2000), https://perma.cc/9EW5-5GKT.

out important governmental functions. Removing race and ethnicity questions will not generate that necessary data.

3. "Removing race and ethnicity questions would reduce disclosure and privacy risks."

Pursuant to Title 13, the Bureau is prohibited from publishing any data that would identify any individual respondents to the decennial census questionnaire.[83] The Bureau purports to meet this obligation ahead of the 2030 Census by altogether eliminating demographic questions pertaining to race and ethnicity. The Bureau contends that the inclusion of these demographic questions would put respondents at higher risk of identification, thus violating both respondents' privacy and the law.

However, the Bureau's ostensible privacy concerns are undermined by the Department of Commerce's rollbacks to existing privacy protections for statistical products, including the census. Earlier this year, the Secretary of Commerce ordered the Bureau and the Bureau of Economic Analysis to stop implementing noise infusion for its statistical products.[84] The Bureau previously used statistical noise to not only protect respondents from identification in detailed demographic data sets but also to ensure the necessary balance between accuracy and privacy. Instead, the Secretary directed Commerce's statistics agencies to implement "coarsening," which involves "reducing the level of detail or specificity of published statistics, such as through rounding, aggregating (grouping), and/or the use of ranges."[85] Moreover, where coarsening would "substantially defeat the accuracy or usability of a statistical product," such as prospective census data, the Census Bureau is directed to suppress these figures.[86]

These actions, taken together, evince the Bureau's preference for inaccurate or, ultimately, withheld data. In eliminating noise infusion as a privacy safeguard that also ensured accuracy at a granular level, the Census Bureau's purported privacy concerns are pretext to eliminate critical data collection altogether. And, as the Supreme Court previously held, the agency's advancement of pretextual reasons for a policy decision necessarily violates its obligations under the APA.[87] The Bureau's claim that removing race and ethnicity questions will protect respondents' data privacy and fulfill the Bureau's legal obligations to do so are plainly "more of a distraction" than an adequate reason.[88]

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[83] 13 U.S.C. § 9(a)(2).
[84] *See* U.S. Dep't of Com., Off. of Priv. & Open Gov., *Disclosure Avoidance for Statistical Products*, DAO 216-26 (June 4, 2026), https://www.commerce.gov/opog/disclosure-avoidance-statistical-products; *see also* Jeffrey Mervis, *Scientists attack ban on adding 'noise' to U.S. census data and many surveys*, Science (July 20, 2026), https://www.science.org/content/article/scientists-attack-ban-adding-noise-u-s-census-data-and-many-surveys.
[85] Dep't of Com., DAO 216-26, *supra* note 84.
[86] *Id.*
[87] *See Dep't of Com.*, 588 U.S. at 785.
[88] *Id.*

4. "The Bureau expresses skepticism about race and ethnicity as meaningful governmental categories."

The Proposed Rule's skepticism regarding race and ethnicity as meaningful governmental categories is difficult to reconcile with federal law. Congress has enacted numerous statutes that depend on the identification of racial and ethnic groups, including the VRA (as discussed above), the Fair Housing Act, and federal equal-employment laws. The way that race has been discussed in the "national discourse" does not alter the fact that these statutes require governments, courts, and regulated parties to avoid racial discrimination. So long as federal law continues to prohibit race-based discrimination and protect minority voting rights, race and ethnicity remain meaningful governmental categories.

IV. The Census Bureau Should Not Inquire about Citizenship or Legal Status.

The Bureau suggests that it may include a question on the short-form decennial census questionnaire regarding a respondent's legal status. To the extent the Proposed Rule indicates the Bureau's intent to do so, that decision would be unlawful and would seriously hinder the response rate for the decennial census.[89]

First, the Bureau contends that *Department of Commerce v. New York* permits the Bureau to include a question about respondents' legal status.[90] While the Supreme Court acknowledged that nothing in the Enumeration Clause prohibits the Bureau from inquiring about citizenship, that decision is subject "to review for compliance with . . . the Census Act" and the "requirements of reasoned agency decisionmaking."[91] Absent adequate reason for reversing course (and none exists), adding a citizenship question to the decennial census would be arbitrary and capricious agency decision-making.

Second, the Bureau offers little to no reasoning as to why it is considering inquiring about citizenship on the census. The Bureau claims that adding a citizenship question would "accord with substantial past practice," yet provides no explanation as to how it arrived at this conclusion.[92] Nor does the Bureau reckon with the present two-decade old policy of omitting a citizenship question from the census and instead including it on the ACS for the express purpose of refraining from discouraging noncitizens from responding to the decennial census.[93]

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[89] In sharp contrast to the removing the decades-old questions about race and ethnicity, adding a question about legal status would be a relatively new practice and one that the Bureau previously disclaimed. The Bureau offers no rationale for *why* it would need such additional data and how federal agencies or other stakeholders would rely upon such data, as they do race and ethnicity data.

[90] 588 U.S. 752 (2019).

[91] *Id.* at 773.

[92] 91 Fed. Reg. at 57526.

[93] *Dep't of Com.*, 588 U.S. at 761 (citing *Fed'n of Am. Immigr. Reform v. Klutznick*, 486 F.Supp. 564, 568 (D.D.C. 1980) ("[A]ccording to the Bureau[,] any effort to ascertain citizenship will inevitably jeopardize the overall accuracy of the population count."); Brief for Former Directors of the U.S. Census Bureau as Amici Curiae Supporting Appellees at 25, *Evenwel v. Abbott*, No. 14-940 (U.S. Sep. 25, 2015) (inquiring about citizenship would "invariably lead to a lower response rate").

It is particularly striking that the Bureau declines to consider the context in which it suggests reinserting a citizenship question into the short-form decennial census. News reports and filings in federal courts across the country repeatedly point out that many immigrants—lawfully and unlawfully present—are fearful of the Administration's ongoing immigration enforcement campaign.[94] Federal immigration agents have sought to detain individuals at their homes, while driving, while working, and at schools, grocery stores, places of worship, and courthouses.[95] The ongoing immigration enforcement campaign—which now spans almost two full years—heightens many immigrant communities' distrust of the federal government and unwillingness to interact with federal agencies out of fear that it will lead federal agents back to an individual's family or community. Perhaps more than ever, lawfully present[96] and undocumented immigrants[97] (and, indeed, even U.S. citizens from racial and ethnic minority groups) are less likely to respond to the census.

In addition, the Bureau fails to engage meaningfully with any data or concerns regarding the addition of a citizenship question, including the overwhelming evidence—curated by the Bureau itself—that such a question would dramatically reduce the response rate of certain demographics and lead to an undercount in many communities: "The inclusion of a citizenship question increases the undercount of households with noncitizens."[98] Such a decision would be arbitrary and capricious particularly in light of the Supreme Court's acknowledgement that the Bureau has "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."[99] As adding a citizenship question would lead to an undercount and jeopardize the crucial representation rights that census data undergirds, the agency's decision to do so anyway would be unlawful and factually unsupported.

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[94] *See, e.g.*, Alejandro Santos Cid, *In San Antonio's immigrant community, the fear of ICE weighs on every move*, The Tex. Trib. (Aug. 13, 2026), https://perma.cc/ME5L-NREL; Abdul Wahid Gulrani, *A knock at the door: fear of ICE is transforming daily life in America*, The Guardian (Jan. 23, 2026), https://www.theguardian.com/commentisfree/2026/jan/23/ice-fear-life-america-change; Diana Guelespe *et al.*, Economic and Health Challenges Affecting Mothers in an Era of Heightened Immigration Enforcement, Urb. Inst. (Oct. 14, 2026), https://www.urban.org/research/publication/economic-and-health-challenges-affecting-mothers-era-heightened-immigration.

[95] Luke Barr and Julia Reinstein, *Trump authorizes ICE to target courthouses, schools and churches*, ABC News (Jan. 22, 2025), https://abcnews.com/Politics/trump-authorizes-ice-target-schools-churches/story?id=117954409.

[96] Lawfully present immigrants, especially those living with undocumented immigrants, are less likely to respond if the census includes a citizenship question. *See infra* note 97.

[97] Memorandum from the Ctr. for Surv. Measurement to U.S. Census Bureau's Assoc. Directorate for Rsch. and Methodology 2 (Sep. 20, 2017), https://perma.cc/9SBJ-HJBQ (One "Spanish-speaking respondent . . . mentioned being afraid because of the current political climate and news reports about changing immigration policy.").

[98] J. David Brown & Misty L. Heggeness, Citizenship Question Effects on Household Survey Response, U.S. Census Bureau (June 2024), https://perma.cc/NC8Y-5V5W.

[99] *Dep't of Com.*, 588 U.S. at 773 (quoting *Franklin*, 505 U.S. at 819-20); *accord* J. David Brown et. al, Predicting the Effect of Adding a Citizenship Question to the 2020 Census, U.S. Census Bureau (June 2019), https://perma.cc/9LPV-6VAG.

The Bureau should not include a citizenship question on the short-form decennial census and certainly should not decide to do so without a more fulsome explanation of its decision and a dedicated notice-and-comment opportunity.

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For all the reasons stated above, CLC urges that the Commerce Department and Census Bureau abandon this ill-conceived Proposed Rule. Its unlawful and poorly reasoned proposals will threaten Constitutionally mandated apportionment and the reliability of census data, jeopardizing the enforcement of federal civil rights laws and the distribution of trillions in federal dollars. The Proposed Rule's harm to communities cannot be understated and should compel the Bureau to reverse course.

In the light of the deficiencies identified here, we ask the Bureau not to finalize this Proposed Rule. Thank you for your attention to these important issues. For more information, please contact CLC's Senior Legal Counsel, Renata O'Donnell, at rodonnell@campaignlegalcenter.org.

Sincerely,

Campaign Legal Center