



**Statement Of  
Asian Americans Advancing Justice – AAJC**

**Hearing On  
“Questions Regarding the U.S. Census”**

**House of Representatives  
Judiciary Committee  
Subcommittee on the Constitution and Civil Justice**

**June 8, 2018**

Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) submits this written testimony to the House of Representative’s Judiciary Committee’s Subcommittee on Constitution and Civil Justice in connection with its June 8, 2018 hearing titled, “Questions Regarding the U.S. Census.” Advancing Justice – AAJC, a national nonprofit, non-partisan organization founded in 1991 with a mission to advance the civil and human rights of Asian Americans and to build and promote a fair and equitable society for all, considers the census to be the backbone of its mission. With the next decennial census less than two years away, Advancing Justice – AAJC is alarmed at efforts that subvert the Constitution, derail the 2020 Census and ultimately result in an unfair and inaccurate count – one that does not count all communities equally. The Constitution is clear that all residents are to be counted through the decennial census, with no restrictions based on citizenship or immigration status.

Recognizing the importance of census data for the health of our society and democracy, Advancing Justice | AAJC maintains a permanent census program that monitors census policy, educates policy makers, and conducts community outreach and education to encourage participation in the surveys conducted by the Census Bureau, including for Census 2000 and Census 2010. Advancing Justice | AAJC has also served as a member of numerous advisory committees to the Census Bureau since 2000, including currently, the National Advisory Committee on Racial, Ethnic and Other Populations. Additionally, Advancing Justice | AAJC co-chairs the Leadership Conference on Civil and Human Rights’ Census Task Force.

Census data are critical for a functioning society as it allows for the distribution of over \$800 billion federal funds annually to states,<sup>1</sup> informs effective and efficient policy and planning decisions and is used to reapportion political representation and to redistrict at all levels. Without an accurate count of Asian Americans, these decisions will not address the needs of growing Asian American communities.

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<sup>1</sup> Andrew Reamer, Geo. Wash. Univ. Inst. of Pub. Policy, COUNTING FOR DOLLARS 2020 The Role of the Decennial Census in the Geographic Distribution of Federal Funds Report #2: Estimating Fiscal Costs of a Census Undercount to States (2018), [https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/GWIPP\\_Reamer\\_Fiscal\\_Impacts\\_of\\_Census\\_Undercount\\_on\\_FMAP-based\\_Programs\\_03-19-18.pdf](https://gwipp.gwu.edu/sites/g/files/zaxdzs2181/f/downloads/GWIPP_Reamer_Fiscal_Impacts_of_Census_Undercount_on_FMAP-based_Programs_03-19-18.pdf).

Census data are even more important for Asian Americans as it is the most comprehensive set of socioeconomic data points on Asian American communities, particularly for subgroups (e.g. Chinese, Vietnamese, Asian Indian, and Filipino). Often viewed as homogenous, these communities include more than several dozen detailed racial and ethnic groups that can differ dramatically across key social and economic indicators. For example, while only 6% of Filipino Americans nationwide live below the poverty line, approximately 26% of Hmong Americans are poor.<sup>2</sup> Roughly 73% of Taiwanese Americans hold a bachelor's degree, yet only 12% of Laotian Americans do.<sup>3</sup> Without accurate data by detailed race group, some of the most disadvantaged in our communities are rendered invisible to policymakers, leaving their critical needs unmet.

Unfortunately, Asian Americans are among those who have historically experienced a differential undercount. The undercount of the Asian American and Pacific Islander community<sup>4</sup> in the 1990 Census was 2.36%.<sup>5</sup> The 2000 Census yielded a slight overcount nationally for Asian Americans and a 2.12% undercount for the Native Hawaiian and Pacific Islander (NHPI) community.<sup>6</sup> Of course, even a net national overcount/undercount of around zero masks a much larger counting problem, with some AAPI subgroups believing they are undercounted. For example, the Cambodian population in Long Beach, California believes they have been undercounted over the last several decades.<sup>7</sup> The 2000 U.S. Census counted about 17,000 Cambodians in Long Beach, while informal estimates from local groups indicate a population closer to 50,000.<sup>8</sup> The 2010 Census had a relatively "accurate" count for AAPIs, with a net undercount rate of 0.08% for Asian Americans and 1.34% for NHPIs.<sup>9</sup> While statistically insignificant, the 2010 Census, in fact, missed hundreds of thousands of Asian Americans – a problem that was offset, at the national level, by double counting or other mistaken enumerations.<sup>10</sup> The proportion of Asian Americans who should have been counted but were not during the last census was higher than that of non-Hispanic Whites, with 5.3% of Asian Americans not counted as compared to 3.8% for non-Hispanic Whites.<sup>11</sup>

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<sup>2</sup> Asian Pac. Am. Legal Ctr. & Asian Am. Justice Ctr., *A Community of Contrasts: Asian Americans in the United States*: 2011 36 (2011), [http://www.advancingjustice.org/pdf/Community\\_of\\_Contrast.pdf](http://www.advancingjustice.org/pdf/Community_of_Contrast.pdf).

<sup>3</sup> *Id.* at 31.

<sup>4</sup> Prior to the 2000 Census, Asian Americans and Native Hawaiian and Pacific Islanders were reported together as one category as required by the Office of Management and Budget at that time. Elizabeth M. Hoeffel et al., U.S. Census Bureau, *The Asian Population: 2010* (2012), <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf> (hereinafter "Asian 2010 Report").

<sup>5</sup> Thomas Mule, U.S. Census Bureau, *2010 Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States* 15 (2012), [https://www.census.gov/coverage\\_measurement/pdfs/g01.pdf](https://www.census.gov/coverage_measurement/pdfs/g01.pdf) (hereinafter "2010 CCM Report").

<sup>6</sup> *Id.* The 2000 Census was the first census that separated Native Hawaiian and Pacific Islanders from Asian Americans, as required by the Office of Management and Budget's 1997 Revisions to the Standards for the Classification of Federal Data on Race and Ethnicities. See Hoeffel et al., *supra* note 4.

<sup>7</sup> Greg Mellen, *Long Beach Cambodians Want To Be Counted*, Press-Telegram, (Sept. 30, 2009, updated Sept. 1, 2017), <http://www.presstelegram.com/2009/09/30/long-beach-cambodians-want-to-be-counted/>.

<sup>8</sup> *Id.*

<sup>9</sup> Mule, *supra* note 5, at 15.

<sup>10</sup> *Id.* at 17.

<sup>11</sup> *Id.*

## **CONSTITUTIONAL AND SUPREME COURT DECISIONS REQUIRE A COUNTING OF ALL PERSONS**

Efforts to exclude the undocumented population from the decennial census count flies in the face of the U. S. Constitution. Article I, sec. 2, clause 3 of the Constitution requires a count every 10 years (decennial census) of all persons living in the country for the purpose of apportioning seats in the U.S. House of Representatives among the states. The Constitution explicitly requires an “actual Enumeration” of “all persons,” imposing on the federal government the duty to count the “whole number of persons in each State.”<sup>12</sup> Both Republican and Democratic administrations, through the U.S. Department of Justice (DOJ), have confirmed unequivocally that the Constitution requires a count of all persons living in the United States on Census Day, *regardless of citizenship status*.<sup>13</sup>

Moreover, in adopting the 14<sup>th</sup> Amendment, Congress rejected proposals to allocate seats in the House of Representatives based on voter-eligible population alone, rather than total population.<sup>14</sup> Supreme Court rulings affirming the 14<sup>th</sup> Amendment’s guarantee of equal representation require that congressional districts have equal numbers of people.<sup>15</sup> Furthermore, in *Evenwel v. Abbott*, the Supreme Court unequivocally stated that “the Fourteenth Amendment calls for the apportionment of congressional districts based on total population.”<sup>16</sup> In doing so, the Court quoted from both James Madison and Alexander Hamilton in establishing that Congressional representation be “founded on the aggregate number of inhabitants.”<sup>17</sup> This principle was confirmed and restated during debates related to the passage of the Fourteenth Amendment. During those debates, some members of Congress fiercely advocated for a “legal voter” basis for Congressional apportionment. That view was rejected in the Fourteenth Amendment, which retained the “whole population” basis of apportionment. Thus, in affirming total population as the basis for Congressional apportionment, it follows that the decennial census count must, in fact, count the entire population, including undocumented persons.

## **ADDITION OF AN UNTESTED CITIZENSHIP QUESTION CREATES FEAR AND WILL LEAD TO UNRELIABLE RESULTS (AS WOULD EFFORTS TO DOCUMENT THE UNDOCUMENTED)**

The decision by Secretary of Commerce Wilbur Ross on March 26, 2018 for the Census Bureau to add an untested and unnecessary question on citizenship status to the 2020 Census form will lead to unreliable data. This decision is disrupting preparations at a pivotal point in the decade, undermining years of research and testing. The citizenship question has not appeared on the decennial census since 1950, and no testing has been done to determine its effect on the accuracy of Census 2020.

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<sup>12</sup> 2 U.S.C. § 2a. *See also, Evenwel v. Abbott*, 136 S. Ct. 1120, 1127 (2016).

<sup>13</sup> *See* Letter from Carol T. Crawford, Assistant Att’y Gen., to Jeff Bingaman, Chairman, Subcomm. on Gov’t Info. & Regul’n (Sept. 22, 1989) (on file with U.S. Dep’t of Justice).

<sup>14</sup> *Evenwel*, 136 S. Ct. at 1127-28.

<sup>15</sup> *See Wesberry v. Sanders*, 376 U. S. 1, 7–8 (1964), *Reynolds v. Sims*, 377 U. S. 533, 568 (1964).

<sup>16</sup> *Evenwel*, 136 S. Ct. at 1129.

<sup>17</sup> *Id.* at 1127.

Despite Secretary Ross's claim that there is no evidence that this decision will harm participation in the census,<sup>18</sup> the Census Bureau itself has provided evidence that residents are fearful of responding to government surveys because of the current anti-immigrant environment. Noting "a recent increase in respondents spontaneously expressing concerns about confidentiality," Census Bureau researchers found "an unprecedented ground swell in confidentiality and data sharing concerns, particularly among immigrants or those who live with immigrants" across communities and geographies.<sup>19</sup> More specifically, Census Bureau researchers "heard respondents express new concerns about topics like the 'Muslim ban,' discomfort 'registering' other household members by reporting their demographic characteristics, the dissolution of the 'DACA' (Deferred Action for Childhood Arrival) program, repeated references to Immigration and Customs Enforcement (ICE)," and so forth.<sup>20</sup> In one case, an immigrant respondent stopped responding to questions about citizenship status during a survey interview and walked out of their own apartment, leaving the interviewer alone.<sup>21</sup>

In their recent memo, the Census Bureau also noted that "several Chinese-speaking focus group respondents stated that the Chinese community's main fear or concern was immigration status and how the data are used. They also expressed concern about opening the door to a government official and not wanting to be 'investigated.'"<sup>22</sup> This aligns with what was learned in focus groups of Asian Americans conducted by the Census Bureau prior to the 2010 Census.<sup>23</sup> In that research, many focus group participants found the census confusing, invasive, and potentially threatening, with the misguided belief that the census was linked to immigration enforcement or the IRS. Despite living in the U.S. during the 2000 Census, very few had previously participated in the census, citing language barriers, lack of interest, and misunderstanding about who could participate (believing only citizens could participate) as reasons for not participating.<sup>24</sup> The citizenship question, as the Bureau itself recognized, could present a barrier to participation in the 2020 Census, impact data quality, and would have a disproportionate impact on hard-to-count populations.

Asian Americans will be particularly harmed by this decision. The research to date has shown that our communities, as well as immigrant communities, are distrustful and fearful of sharing data with the federal government, particularly as it relates to citizenship. Additionally, Asian

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<sup>18</sup> The responsibility of rigorous research and testing to prove that the addition of the citizenship question would not affect accuracy of the census falls squarely on Secretary Ross and his department. It is incumbent on the Bureau to test the question further before adding it, especially when its research has shown this to be a concern.

<sup>19</sup> Memorandum from the Center for Survey Measurement (CSM) to Associate Directorate for Research and Methodology (ADRM) on Respondent Confidentiality Concerns (Sept. 20, 2017) (on file with U.S. Census Bureau), <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Image Megia Servs., Inc. & WBA Mkt. Research, U.S. Census Bureau, Ethnic and Racial Sub-Population Focus Group Research 58 (2007), <http://www.phila.gov/phillycounts/pdfs/Ethnic%20and%20Racial%20Sub-Population%20Focus%20Group%20Research%20-%20Asian%20&%20Arab%20Americans.pdf> (hereinafter "Asian Focus Groups Report").

<sup>24</sup> A number of participants mistakenly confused the census questionnaire with other telephone or mail surveys conducted by private businesses or government agencies. *Id.*

Americans are significantly immigrant, with over two-thirds of the population being foreign-born (*See Table below*). More than a quarter of Asian Americans are not citizens. One quarter of Asian American immigrants arrived in the last seven years, which means that they have never participated in a decennial census. Furthermore, different Asian American subgroups are more immigrant than others, with those communities being even more susceptible to being missed due to concerns about the addition of the untested citizenship question.

**Table: Asian American Immigrants<sup>25</sup>**

	<b>Total population</b>	<b>Foreign-born</b>	<b>Not a Citizen</b>	<b>Percentage of Immigrants who are Recent Immigrants<sup>26</sup></b>
<b>Asian American</b>	<b>17,556,935</b>	<b>66.2%</b>	<b>27.7%</b>	<b>24.6%</b>
Asian Indian	3,813,407	71.3%	37.1%	32.9%
Bangladeshi	175,592	74.7%	34.8%	37.5%
Burmese	153,262	82.5%	59.3%	51.8%
Cambodian	259,554	54.2%	13.3%	10.5%
Chinese	4,214,856	69.3%	30.6%	27.1%
Filipino	2,811,885	65.1%	19.5%	16.1%
Hmong	278,871	36.2%	8.0%	7.4%
Indonesian	76,516	73.6%	45.0%	19.4%
Japanese	789,830	41.7%	28.3%	30.8%
Korean	1,438,915	71.6%	27.3%	14.9%
Laotian	205,131	56.8%	12.8%	7.0%
Nepalese	155,573	85.2%	65.0%	56.2%
Pakistani	460,515	66.3%	25.3%	26.5%
Thai	202,744	76.9%	33.1%	23.5%
Vietnamese	1,803,575	67.4%	16.3%	15.8%

Source: S0201: Selected Population Profile In The United States, 2016 American Community Survey 1-Year Estimates

Any effort to add an immigration status question, particularly at this late date and with no testing, would only further serve to ensure unreliable data. The harm that will flow from the addition of a citizenship question will be exacerbated by the current political climate and the public's perception of the government and where its priorities lie. Immigrant communities already have been shown to fear the census.<sup>27</sup> In fact, we have seen reports of immigrants

<sup>25</sup> The data presented here is for the "alone" population. In presenting data on race, the Census Bureau provides three conceptual groups. First, people who reported only one race (or subgroup) are referred to as the "alone" population. The alone population can be viewed as the minimum number of people reporting as that group. Second, individuals who chose more than one of the six race categories are referred to as the race in combination population. Third, the maximum number of people reporting Asian is reflected in the Asian "alone-or-in combination" population, which represents those who reported Asian alone and those who reported Asian in combination with one or more other races.

<sup>26</sup> Recent immigrants are those who entered the country in 2010 or later. The percentage is of the population that is born outside of the United States.

<sup>27</sup> Christina Isabelli, Yuling Pan & Stephen Lubkemann, III. Wesleyan Univ., Observing Census Enumeration of Non-English Speaking Households in the 2010 Census: Spanish Report (2012), <https://www.census.gov/srd/papers/pdf/rsm2012-06.pdf>.

shunning common activities out of fear of reprisal from the government. For example, journalists have noted stories of parents “keeping their children home from school [and] ... suspend[ing] after-school visits to the public library”<sup>28</sup> as well as immigrants avoiding attending church service.<sup>29</sup> This climate will exacerbate immigrants’ fear of contact with government agencies, including the Census Bureau. Undocumented immigrants, legal permanent residents, and even U.S. citizens who live in households where family members have varying immigration status, were already disinclined to answer the Census prior to this decision.<sup>30</sup> The anti-immigrant climate today, coupled with any last-minute additions of citizenship or status questions, will harm confidence in the confidentiality of the Census and promote the belief among many residents that the Bureau will use the information they provide in a detrimental manner.

The reality is asking every household and every person in the country about their citizenship status in the current political environment – when there is no need to do so – will cause fear and may cause hundreds of thousands of people in our communities to avoid the census for fear of being targeted by this administration. The Census Bureau’s own research shows that asking about citizenship has a chilling effect on respondent’s willingness to participate in government surveys. Lower response rates result in less accurate and timely statistics that can only be summarized at highly aggregated levels and preclude detailed information at the geographic and subpopulation levels, with small and minority populations, including Asian Americans, being underrepresented by official statistics, particularly at the disaggregated levels. This would likely intensify the effects of previous decreases in response rates, leading to unsustainable increases in costs and higher risks of bias in published results. According to the Census Bureau, every one percent decrease in the self-response rate will increase the cost of the count by \$55 million.

## **CONCLUSION**

The Census Bureau has taken important steps to improve the count in 2020 but there are still many areas the Census Bureau needs to address in order to meet the challenges facing an accurate count in 2020 and ensure full participation by the American public. Their task has been made exponentially harder with the last-minute addition of an untested question on citizenship. Any effort to exclude or “document” undocumented persons in the decennial census will only exacerbate the problems, drive up costs, and likely result in unreliable data. Not only should the citizenship question be removed from the 2020 census, but any and all efforts to exclude or document the undocumented must not be allowed. We ask that this statement be entered into the record and appreciate the opportunity to provide our concerns about how these efforts can have a detrimental impact on our country’s ability to achieve a fair and accurate census in 2020.

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<sup>28</sup> Ray Sanchez, *After ICE Arrests, Fear Spreads Among Undocumented Immigrants* (Feb. 12, 2017), <http://www.cnn.com/2017/02/11/politics/immigration-roundups-community-fear/>.

<sup>29</sup> The Associated Press, *Immigrants Wait in Fear Over Raids; Trump Takes Credit* (Feb. 12, 2017), <http://www.cbsnews.com/news/immigrants-wait-in-fear-over-raids-trump-takes-credit/>.

<sup>30</sup> MAYA Advert. & Commc’ns & Garcia Research Assocs., *Preparation for the 2010 Census Hispanic Community Focus Group Qualitative Research Report* (2007), <http://www.phila.gov/phillycounts/pdfs/Hispanic%20Community%20Focus%20Groups%20Qualitative%20Research%20Report.pdf> (“Latino Focus Groups Report”).