ASIAN AMERICANS ADVANCING JUSTICE AAJC

November 2, 2026

SUBMITTED VIA REGULATIONS.GOV

Daniel Sweeney
Deputy General Counsel for Economic, Statistical, and Regulatory Affairs
Office of the General Counsel
U.S. Department of Commerce
Washington, DC 20230

Re: Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions (Federal Register Notice Docket Number USBC-2026-0628)

Dear Mr. Sweeney:

Asian Americans Advancing Justice – AAJC (Advancing Justice – AAJC) provides the following comments in response to the proposed rule "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions" 91 Fed. Reg. 57,524 (proposed Sept. 10, 2026) (Docket No. USBC-2026-0628). We strongly oppose the rule. It is not merely a technical adjustment to census methodology, but a consequential departure from constitutional text, settled residence principles, the Census Bureau's prior factual findings, and decades of governmental and community reliance.

If adopted, the proposed rule would result in less accurate and poorer quality census data, including for Asian Americans. We urge the Census Bureau (Department of Commerce) to withdraw this proposed rule and engage in a new rulemaking process that engages the public and other interested stakeholders in a meaningful manner. At a minimum, and for the reasons discussed below, the comment period should be extended to at least 90 days.

Organizational Information

Advancing Justice – AAJC is a national nonprofit, non-partisan organization founded in 1991. Our mission is to advance the civil and human rights of Asian Americans and to build and promote a fair and equitable society for all. Advancing Justice – AAJC considers the census, including the American Community Survey (ACS), to be the backbone of its mission. Advancing Justice – AAJC maintains a permanent census program that monitors census policy, educates policy makers, and conducts community outreach and education on the surveys conducted by the Census Bureau. Advancing Justice – AAJC has been working to eliminate the barriers that have historically resulted in the undercounting and underreporting of Asian Americans in federal data collection and analysis efforts,

particularly in the census count. Advancing Justice – AAJC has served as a member of numerous advisory committees to the Census Bureau since 2000, including the National Advisory Committee on Racial, Ethnic and Other Populations, for which Advancing Justice – AAJC served two three-year terms through August 2019, and its Vice President of Census and Voting served on the 2030 Census Advisory Committee. Additionally, Advancing Justice – AAJC currently co-chairs the Leadership Conference on Civil and Human Rights' Census Task Force and serves as co-coordinator of Census Counts, a campaign that brings together community-based organizations across a wide spectrum of advocacy: civil rights, immigrant, LGBTQ, disability, infant and child, poverty and homelessness, faith-based, labor, health care, education, youth, and more.

In addition to extensive work engaging on census policy, Advancing Justice – AAJC conducts community outreach and education to encourage participation in the surveys conducted by the Census Bureau and on census policy issues with the more than three hundred local organizations involved in Advancing Justice – AAJC's Community Partners Network, serving communities in thirty-seven states and the District of Columbia. Advancing Justice – AAJC conducted national outreach and educational campaigns focused on Asian American communities for Census 2000, Census 2010, and Census 2020. Advancing Justice – AAJC was the 2020 Census national resource hub for the Asian American and Native Hawaiians and Pacific Islander communities.

Proposed Residence Criteria

In this proposed rule, the Census Bureau attempts to take on authority not granted to it by law and use that authority to dictate who "counts." In 2018, when the Census Bureau attempted to add a citizenship question to the 2020 Census, it stated that the mission was "counting every person in the 2020 Census once, only once, and in the right place." The current rule describes the mission as "counting every person ***who should be counted*** once, only once, and in the right place." (emphasis added). But such authority is not granted by law – either by the Constitution or any statutory language. In fact, Congress' delegation of census authority to the Secretary of Commerce operates within constitutional constraints and does not authorize the Secretary to exclude defined categories of persons from the apportionment base.[1]

The Proposed Exclusion of Non-LPR Residents Violates the Constitutional Requirement to Count the Whole Number of Persons

The proposed § 60.4 would not merely revise census methodology; it would rewrite the apportionment population by counting only citizens and lawful permanent residents among foreign nationals while excluding undocumented immigrants and some other

[1] The apportionment statute requires the President to transmit to Congress "a statement showing the whole number of persons in each State, excluding Indians not taxed, as ascertained under the seventeenth and each subsequent decennial census of the population." 2 U.S.C.A. § 2a.

residents with temporary or non-LPR status. The constitutional foundation for the census rests on two interlocking provisions. Article I, Section 2, Clause 3 directs that an "actual Enumeration" of the population be conducted every ten years "in such Manner as they shall by Law direct."[2] The Fourteenth Amendment, Section 2, as ratified in 1868, replaced the original Three-Fifths Compromise and mandated that "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."[3]

The Constitution is clear that all persons are to be counted for the purposes of apportionment

Article I, Section 2, Clause 3 of the Constitution requires a count every 10 years (decennial census) of the "respective Numbers" of each state (*i.e.*, "the whole Number of [] Persons") in the country for the purpose of apportioning seats in the U.S. House of Representatives among the states. Article I requires an "actual Enumeration," and the Fourteenth Amendment imposes on the federal government the duty to count the "whole number of persons in each State."[4] The Constitution's apportionment provisions count "persons"—not "citizens," "voters," or "electors"—and that choice is deliberate.[5] The Framers knew to impose citizenship or residence requirements when they intended to; other provisions of the Constitution expressly do.[6]

Both Republican and Democratic administrations, through the U.S. Department of Justice (DOJ), have long confirmed that the Constitution requires a count of all persons living in the United States on Census Day, regardless of citizenship or immigration status.[7] Furthermore, the phrase "whole number of persons" has been consistently interpreted by courts, the Executive Branch, and Congress to include all persons residing in the United States regardless of citizenship or immigration status. In *Franklin v. Massachusetts*, the Supreme Court explained that "usual residence" has been the touchstone for allocating persons to States since the first enumeration Act of 1790. Nothing in that standard turns

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[2] U.S. Const. art. I, § 2, cl. 3.
[3] U.S. Const. amend. XIV, § 2. The only express constitutional exception to the counting requirement, untaxed Indians, has no legal or practical effect today.
[4] U.S. Const. art. I, § 2, cl. 3; *id.* amend. XIV, § 2; *see also* 2 U.S.C. § 2a(a); *Evenwel v. Abbott*, 578 U.S. 54, 59 (2016).
[5] *See Evenwel*, 578 U.S. at 65 (recounting the Framers' decision to apportion House seats by total population); The Federalist No. 54, at p. 284 (James Madison) (Clinton Rossiter ed., 1961)
[6] *See* U.S. Const. art. I, § 2, cl. 2 (Representatives must be citizens and "Inhabitant[s]" of the State in which they are chosen); *id.* art. I, § 3, cl. 3 (same for Senators); *id.* art. II, § 1, cl. 5 (President *must* be a "natural born Citizen" and fourteen years a "Resident within the United States").
[7] *See* Letter from Carol T. Crawford, Assistant Att'y Gen., to Jeff Bingaman, Chairman, Subcomm. on Gov't Info. & Regul'n (Sept. 22, 1989) (reprinted in 135 Cong. Rec. S22,521 (daily ed. Sept. 29, 1989)); DOJ Memorandum re: The Application of the Apportionment Clause of the Fourteenth Amendment to Illegal Aliens, May 16, 1988, https://www.knightcolumbia.org/documents/gp6hdfw2oo. *See also*, DOJ's defense of counting all residents in *FAIR v. Klutznick* (1980).

on citizenship or immigration status.[8] The constitutional text itself provides no exception for non-citizens, undocumented immigrants, or other residents on the basis of immigration status. Thus, the proposed exclusion directly alters who counts for representation and conflicts with the constitutional and statutory requirement to apportion Representatives based on the whole number of persons in each State. In *Federation for American Immigration Reform v. Klutznick*, the district court, although it ultimately dismissed the cases for lack of standing, observed that the constitutional requirement of counting the "whole number of persons" for apportionment purposes includes undocumented immigrants. The court noted that the Census Bureau had always attempted to count every person residing in a State on Census Day, and emphasized the Census Bureau's longstanding practice of counting all persons residing within the country's borders, regardless of citizenship or lawful status.[9]

Congress has repeatedly rejected proposals to narrow the apportionment base

The proposed exclusions from enumeration are contrary to the constitutional text, judicial precedent, and congressional practice. The Constitution's text is clear: All persons are to be counted for the purposes of apportionment. The courts have agreed. And when members of Congress have sought to narrow the apportionment base, Congress has rejected those efforts and returned to the constitutional requirement of counting all persons.

In adopting the Fourteenth Amendment, Congress rejected proposals to limit the apportionment base to something less than total population, which is precisely what the proposed rule seeks to do. Most notably, Congress rejected proposals to apportion House seats based on the voter-eligible population rather than total population. A voter-based apportionment would have excluded noncitizens along with women, children, and other nonvoters; Congress's rejection of that approach was a rejection of the premise that the apportionment base may be limited to members of the political community.[10]

Supreme Court's one-person, one-vote decisions likewise require that congressional and state legislative districts contain substantially equal numbers of people.[11] In *Evenwel v. Abbott*, the Supreme Court clearly stated that "the Fourteenth Amendment calls for the apportionment of congressional districts based on total population."[12] In reaching that conclusion, the Court relied on James Madison's explanation that representation in the House was to be "founded on the aggregate number of inhabitants."[13] Members of

[8] *Franklin v. Massachusetts*, 505 U.S. 788, 804–05 (1992).
[9] *Fed'n for Am. Immigr. Reform v. Klutznick*, 486 F. Supp. 564, 567 (D.D.C. 1980) (three-judge court).
[10] *Evenwel*, 136 S. Ct. at 1127-28.
[11] *See Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964) (congressional districts); *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) (state legislative districts).
[12] *Evenwel*, 578 U.S. at 68.
[13] *Id.* at 1127.

Congress reaffirmed this principle in debating the Fourteenth Amendment. Some members advocated a "legal voter" basis for congressional apportionment. That view was rejected in the Fourteenth Amendment, which retained total population—the "whole number of persons in each State"—as the basis of apportionment.[14]

In the wake of a new wave of immigration, changing demographics, and a population shift from rural to urban areas, Congress was deadlocked following the 1920 Census in passing re-apportionment legislation, stuck in a new debate about the inclusion of "unnaturalized aliens" in the count. This impasse, in fact, led to a failure to reapportion seats in the House for the entire decade of the 1920s, for the first and only time in the nation's history. Ultimately, Congress passed legislation that cemented the concept of House reapportionment based on the constitutional requirement of total population figures.[15] During the debates for the Permanent Apportionment Act of 1929, Congress again rejected proposals similar to the proposed criteria. The Senate voted down three amendments: one offered by Senator Sackett to exclude aliens from the apportionment count (29–48); one offered by Senator Harrison to tabulate the population both with and without noncitizens (24–55); and one offered by Senator Black to enumerate lawful and unlawful aliens separately (24–56).[16] Senate legislative counsel advised that there was no constitutional authority for such legislation,[17] and similar House proposals were dropped in conference.[18] Congress instead carried the Fourteenth Amendment's "whole number of persons" formulation into what is now 2 U.S.C. § 2a(a). Later efforts to exclude noncitizens from the apportionment base, including in 1940 and 1990, likewise failed.[19] Indeed, in dismissing a 1980 challenge for lack of standing, the three-judge court in *FAIR* observed that the claim that undocumented immigrants must be excluded appeared "very weak on the merits," because such immigrants, legal and illegal alike, "are clearly persons."[20]

Nor can the Census Bureau's reliance on "allegiance" support the proposed rule. The Constitution requires only that an individual be a "person" residing in a State, and even if some element of allegiance were relevant, the historical understanding of that term

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[14] *See Evenwel*, 578 U.S. at 67 (recounting the Fourteenth Amendment debates and Congress's rejection of proposals to base apportionment on voters rather than total population); Cong. Globe, 39th Cong., 1st Sess. 2766–67 (1866) (statement of Sen. Howard); *see also* U.S. Const. amend. XIV, § 2 (apportioning Representatives according to "the whole number of persons in each State").

[15] The Permanent Apportionment Act of 1929.

[16] 71 Cong. Rec. [pages] (1929).

[17] 71 Cong. Rec. [page] (1929).

[18] *See* Brief for Historians of the Census as Amicus Curiae, pp. 28-33, Trump v. New York, 592 U.S. 125 (2020), available at https://www.supremecourt.gov/DocketPDF/20/20-366/160852/20201116152445544_20-366%20BRIEF%20OF%20AMICI%20CURIAE%20HISTORIANS%20OF%20THE%20CENSUS%20IN%20SUPPORT%20OF%20APPELLEES.pdf.

[19] *See* Congressional Research Service, Constitutionality of Excluding Aliens from the Census for Apportionment and Redistricting Purposes, CRS Report for Congress, April 13, 2012, https://www.everycrsreport.com/files/20120413_R41048_e4eb1c369b633cea52b254c5a305e6111eb5d795.pdf.

[20] *FAIR*, 486 F. Supp. at 576.

encompassed resident noncitizens. When the Fourteenth Amendment was adopted, American jurists recognized that anyone who resides in a nation owes a form of allegiance to it. Noah Webster's 1828 dictionary described "local allegiance" as a duty "due from an alien to the government or state in which he resides."[21] An 1860 law dictionary likewise explained that "in the United States, during the residence of aliens amongst us, they owe a local allegiance, and are equally bound with natives to obey all general laws for the maintenance of peace and the preservation of order . . . ."[22] Local allegiance thus turned on residence, not domicile or immigration status.[23]

The Proposed Exclusion of Non-LPR Residents Would Harm Asian Americans and Continues the History of Discrimination against Asian Americans

There is a well-documented history of discrimination against Asian Americans in the United States.[24] Scholars have recorded how our country's immigration policies, including those affecting Asian Americans, shaped ideas about belonging. In the words of historian Mae Ngai, "Restriction not only marked a new regime in the nation's immigration policy; I argue that it was also deeply implicated in the development of twentieth-century American ideas and practices about citizenship, race, and the nation-state."[25] The proposed exclusion would fall heavily on Asian Americans and harm the community's count in the decennial census, continuing the long history of discrimination Asian Americans have faced. Despite the long history of Asian Americans in the United States, there continues to be a false perception that Asian Americans are, and always will be, foreign.[26] Asian Americans have been present in the Americas since before the United States was created,[27] but fights around whether Asian Americans "belong" underpinned the passage of racially discriminatory laws in the United States in the 1800s.[28] From the passage of the Chinese Exclusion Act in 1882 to the racist quotas of the early 20th century, Asian immigration to the United States was extremely restricted, and those Asian Americans who were in the United States were excluded from full integration into American society, both through restrictions on naturalization and through restrictions on who could vote.[29] It wasn't until the passage

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[21] *Allegiance*, Noah Webster, An American Dictionary of the English Language (1828).
[22] *Allegiance*, Alexander M. Burrill, A Law Dictionary and Glossary (2d ed. 1860).
[23] *See* 2 James Kent, Commentaries on American Law 39, 65 (O.W. Holmes, Jr. ed., 12th ed. 1873); *see also Trump v. Barbara*, 146 S. Ct. 2438, 2445 (2026) (discussing allegiance).
[24] Erika Lee, *The Making of Asian America: A History*, New York: Simon & Schuster, 2016.
[25] Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America*, Princeton: Princeton University Press, 2004,
[26] Neil G. Ruiz, Carolyne Im, and Ziyao Tian, "2. Asian Americans and the 'Forever Foreigner' Stereotype," Pew Research Center, November 30, 2023, https://www.pewresearch.org/race-and-ethnicity/2023/11/30/asian-americans-and-the-forever-fAsian Americans are the fastest-growing racial or ethnic group in the U.S.oreigner-stereotype/.
[27] Erika Lee, *The Making of Asian America: A History*, New York: Simon & Schuster, 2016 (4).
[28] "Anti-Asian Laws and Policies," National Park Service, May 27, 2025, https://www.nps.gov/articles/000/anti-asian-laws-and-policies.htm.
[29] Mae M. Ngai, "The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924," *Journal of American History* 86, no. 1, June 1999: 85.

of the Hart-Celler Act in 1965 that Asian immigration was formally unrestricted, and not until the passage of the Voting Rights Act that same year that restrictions on access to voting were formally addressed.[30]

As the only major racial or ethnic group in the United States that is primarily immigrant, Asian Americans will be disproportionately affected by this rule. The Asian American population has been growing rapidly since 2000, more than doubling in the last quarter-century, due primarily to immigration.[31] Overall, over one in five Asian Americans is a non-citizen and almost one in three non-citizens from Asian countries might be excluded from 2030 counts under this proposed rule.

Table 1: Population potentially excluded from 2030 Census from Asia, 2024

Region of Birth	Non-Citizen Population	Lawful Permanent Resident Population	Excluded Population	Excluded Share of Non-Citizen Population
Asia	5,770,000	4,040,000	1,730,000	30%

Sources: rounded data from 2024 ACS and 2024 revised USCIS estimates

The potential impact of the proposed rule on Asian Americans varies by detailed Asian group. Nearly half of Nepalese Americans and around two in five Burmese, Malaysians, Bhutanese, and Mongolians were non-citizens, while less than six percent of Hmong and less than two percent of Okinawans were noncitizens, a share of whom could be excluded.

Table 2: Non-Citizen Asian American Population by Detailed Asian Group, 2021

Asian American Group Alone or in any Combination	Total Population	Non-Citizen Population	Non-Citizen Share of Total Population
Nepalese	191,291	95,289	49.8%
Burmese	207,200	87,662	42.3%
Malaysian	36,782	15,184	41.3%
Bhutanese	28,535	11,445	40.1%
Mongolian	31,384	12,453	39.7%

[30] "Overturning Exclusion, Limiting Immigration," History, Art & Archives United States House of Representatives, https://history.house.gov/Exhibitions-and-Publications/APA/Historical-Essays/Exclusion-to-Inclusion/Overturning-Exclusion-Limiting-Immigration/.

[31] Jens Manuel Krogstad and Carolyne Im, "Key facts about Asians in the U.S.," Pew Research Center, May 1, 2025, https://www.pewresearch.org/short-reads/2025/05/01/key-facts-about-asians-in-the-us/. This growth rate is faster than the growth of Latino, Black, and White populations since 2000. *See*, Abby Budiman and Neil G. Ruiz, "Asian Americans are the fastest-growing racial or ethnic group in the U.S.," Pew Research Center, April 9, 2021, https://www.pewresearch.org/short-reads/2021/04/09/asian-americans-are-the-fastest-growing-racial-or-ethnic-group-in-the-u-s/.

Asian Indian	4,659,914	1,578,770	33.9%
Sri Lankan	67,607	22,092	32.7%
Bangladeshi	216,276	61,203	28.3%
Indonesian	138,918	37,748	27.2%
Chinese, except Taiwanese	5,241,509	1,277,107	24.4%
Asian alone or in combination with one or more other races	*22,781,373*	*5,117,043*	*22.5%*
Thai	320,629	65,762	20.5%
Pakistani	573,134	113,822	19.9%
Korean	1,945,880	364,853	18.8%
Taiwanese	252,797	44,377	17.6%
Japanese	1,585,703	234,482	14.8%
Vietnamese	2,205,084	303,480	13.8%
Filipino	4,252,622	552,739	13.0%
Laotian	256,099	27,209	10.6%
Cambodian	340,697	36,185	10.6%
Hmong	338,774	19,730	5.8%
Okinawan	18,209	352	1.9%

Source: 2021 5-year American Community Survey Selected Population Detail Tables, Table B05001.

Census data determines the number of Representatives in the House, the levels of federal funding, and future planning for each state. If the proposed rule were to take effect, states with high levels of Asian immigration, which include states with high Asian American populations, will lose representation in the House (and thus political power) as well as federal funding (and thus key services and support). States in the Midwest and the South have Asian American populations with the highest shares of non-citizens with Indiana and Kentucky at the top at 29%. States where non-citizen Asian Americans made up the largest shares of the state's population include Hawaii (4.5%), Washington (3.3%), California (3.3%), New Jersey (3.0%), and New York (2.5%).

Table 3: Non-Citizen Asian American Population by States with more than 65,000 Asian American Residents, 2024

State	Non-Citizen Asian Population	Asian Population	Total Population	Share of Asian Pop
Indiana	70,524	243,687	6,924,275	29%
Kentucky	33,995	118,049	4,588,372	29%
Arkansas	20,461	76,925	3,088,354	27%
Michigan	125,494	476,939	10,140,459	26%
North Carolina	134,264	512,577	11,046,024	26%
Nebraska	19,287	74,435	2,005,466	26%

Massachusetts	164,119	648,785	7,136,171	25%
Georgia	168,785	668,084	11,180,878	25%
Ohio	106,728	424,574	11,883,304	25%
Iowa	28,006	111,470	3,241,488	25%
New Jersey	283,835	1,130,729	9,500,851	25%
Alabama	28,611	115,861	5,157,699	25%
Texas	550,665	2,266,357	31,290,831	24%
Connecticut	54,390	229,333	3,675,069	24%
Washington	261,023	1,104,833	7,958,180	24%
Kansas	27,970	120,745	2,970,606	23%
New York	494,578	2,158,917	19,867,248	23%
Pennsylvania	148,286	658,369	13,078,751	23%
Illinois	218,550	975,434	12,710,158	22%
Missouri	43,034	195,493	6,245,466	22%
Arizona	87,832	426,948	7,582,384	21%
South Carolina	31,923	156,371	5,478,831	20%
Tennessee	41,556	204,276	7,227,750	20%
Maryland	104,000	536,367	6,263,220	19%
Utah	29,842	159,007	3,503,613	19%
Wisconsin	45,985	247,769	5,960,975	19%
Virginia	146,764	804,908	8,811,195	18%
Louisiana	20,979	115,312	4,597,740	18%
Oklahoma	25,409	145,884	4,095,393	17%
California	1,291,418	7,483,871	39,431,263	17%
Florida	164,078	991,366	23,372,215	17%
Alaska	10,546	65,549	740,133	16%
Oregon	47,444	312,846	4,272,371	15%
Colorado	47,637	317,504	5,957,494	15%
Minnesota	53,021	378,118	5,793,151	14%
Nevada	54,319	411,154	3,267,467	13%
Hawaii	64,635	825,751	1,446,146	8%

Source: 2024 American Community Survey Selected Population Profiles, Table S0201.

The Census Bureau Should Reject Any Legal-Status Question as it is untested, unwarranted, and contradicts the Census Bureau's own prior findings regarding undercount risk and harm to census accuracy

In addition to the constitutional and statutory infirmities of excluding most noncitizens other than lawful permanent residents (including undocumented immigrants) from the count, there is no way to determine both the citizenship and immigration status of every person living in the United States without deeply undermining accuracy of the decennial

count. While Census Bureau asserts that their proposals regarding legal-status inquiries and status-based exclusions will improve enumeration, it does not meaningfully address its prior findings that citizenship-related questions and policies depress response rates among immigrant households. The administrative record underlying *Department of Commerce v. New York* reflected Census Bureau's conclusion that a citizenship question would reduce self-response and diminish census accuracy, with resulting negative consequences for population counts and federal funding.[32] The proposed rule does not explain why those prior findings are no longer valid, how the new status-based policies avoid the previously identified participation effects, or why any asserted benefits outweigh the resulting undercount risk.

In 2017, the Census Bureau documented fear from residents about responding to government surveys because of the anti-immigrant environment at the time. Census Bureau researchers identified "a recent increase in respondents spontaneously expressing concerns about confidentiality" as well as "an unprecedented ground swell in confidentiality and data sharing concerns, particularly among immigrants or those who live with immigrants" across communities and geographies.[33] Respondents made note of "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, [and] repeated references to Immigration and Customs Enforcement (ICE)."[34] One of the most extreme cases found an immigrant respondent walking out of their own apartment, leaving the interviewer alone, once questions about citizenship came up during a survey interview.[35] A more recent study in 2025 analyzed the Census Bureau's 2019 field test to look at the effect of the citizenship question on measured household roster omission and similarly found that the addition of the citizenship question roughly doubled the existing omission rate gap between U.S.-born, non-Latino white households and households with at least one likely undocumented member, while having no statistically significant effect on the lowest-risk households.[36]

The Census Bureau offers no evidence that this fear has dissipated under the current administration. Instead, it is clear that these fears and unwillingness to participate in the census would be exacerbated by any attempt to add a citizenship and/or immigration status question(s), especially in the context of today's political climate and perceived (and

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[32] 588 U.S. 752 (2019).

[33] 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 ("CSM Memo").

[34] Id.

[35] Id.

[36] J. David Brown and Misty L. Heggeness, Citizenship question effects on household survey response, Journal of Policy Analysis and Management, March 20, 2025, https://onlinelibrary.wiley.com/doi/10.1002/pam.70004; *see also*, *See also,* Census Quality Reinforcement Task Force, Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions" (Nov. 2026) ("CQR Comments").

actual) governmental priorities. This administration has made "mass deportation" a cornerstone of its immigration policy, with nearly one million individuals deported in the first 18 months of this administration.[37] Survey data confirm that this fear is changing how immigrant families go about their daily lives. In a nationally representative survey conducted in fall 2025, three in ten immigrants reported that they or a family member had avoided traveling, working, going to other public spaces, or seeking medical care since January 2025 because of fear of immigration enforcement—a share that rose to three in four among likely undocumented immigrants.[38] These effects reach well beyond undocumented immigrants: 14% of lawfully present immigrants and 8% of naturalized citizens reported that they or a family member had avoided seeking medical care due to immigration-related concerns, and substantial shares of immigrants reported avoiding church and other community activities or taking their children to school.[39]

Given that concerns about detention or deportation have risen sharply over the last several years amongst all immigrants (four in ten immigrants overall), including lawfully present immigrants and naturalized citizens (six in ten lawfully present immigrants and about a quarter of naturalized citizens),[40] the addition of any citizenship and/or immigration status question(s) would likely only heighten existing fear of engaging with government agencies, including the Census Bureau.[41] The anti-immigrant climate today, coupled with the detrimental effects of a citizenship and/or immigration status question(s), would raise heightened concerns about the confidentiality of the Census and promote a belief among many responding to the census would be used to harm them, which would further depress community willingness to engage with the Census.

While the research to date has been specific to a citizenship question, it only logically follows that asking people if they are residing in the country "unlawfully" would cause many to skip the question, or more likely, skip the census in its entirety. As a household-based survey, an entire household—including U.S.-citizen children—may go uncounted if

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[37] https://apnews.com/article/trump-immigration-data-numbers-deportations-a550c554eea7d71deb00d92a0ba78677.

[38] KFF, *Immigrants Report Rising Fear, Negative Economic and Health Impacts, and Changing Political Views During the First Year of President Trump's Second Term* (Nov. 18, 2025), https://www.kff.org/racial-equity-and-health-policy/immigrants-report-rising-fear-negative-economic-and-health-impacts-and-changing-political-views-during-the-first-year-of-president-trumps-second-term/; *see also* Shannon Schumacher et al., KFF, *KFF/New York Times 2025 Survey of Immigrants: Worries and Experiences Amid Increased Immigration Enforcement* (Nov. 18, 2025), https://www.kff.org/racial-equity-and-health-policy/kff-new-york-times-2025-survey-of-immigrants-worries-and-experiences-amid-increased-immigration-enforcement/.

[39] Drishti Pillai, KFF, *Health Care Providers Warn of Impacts of Increased ICE Presence at Health Care Facilities* (Jan. 22, 2026), https://www.kff.org/quick-insights/health-care-providers-warn-of-impacts-of-increased-ice-presence-at-health-care-facilities/.

[40] https://www.kff.org/racial-equity-and-health-policy/kff-survey-of-immigrants-views-and-experiences-in-the-early-days-of-president-trumps-second-term/.

[41] Christina Isabelli, Yuling Pan & Stephen Lubkemann, Ill. 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 (showing that immigrant communities fear the census).

any member has uncertain or undocumented immigration status. As a result, every state and nearly every community would be harmed for representation purposes, fair allocation of federal and state funding, and smart private sector investment. Research has been clear that adding a citizenship question would suppress the count of immigrant and mixed-status families, as well as feed into growing public distrust of the government by all communities. An immigration status question, which is more charged than even a citizenship question, would lead to a woefully inaccurate census, especially at a time of pervasive fear across all communities where immigrants live. At the same time, there does not appear to be any evidence that an immigration-status question has been tested by Census Bureau in any form (e.g., a cognitive test, a field test, or an ACS content test).[42] It is the responsibility of the Department of Commerce and the Census Bureau to conduct and present rigorous research and testing that proves that the addition of the citizenship question and/or an immigration status question would not negatively affect the accuracy of the census. In this instance, no research agenda has been developed, no testing has occurred, no public engagement and consultation has been conducted, and the dates for submission to Congress of decennial topics (2027) and decennial question wording (2028) draw closer by the day.

Adding a citizenship and/or immigration-status question would harm Asian Americans

Asian Americans would be particularly harmed by any attempted addition of a citizenship (or immigration status) question. Almost nine in ten Asian Americans (86%) are immigrants or children of immigrants.[43] Over two-thirds of the Asian American population are foreign-born, with many more recent immigrants (since 2010 or later). One in five Asian Americans are not citizens. Furthermore, different Asian American subgroups are more immigrant than others, with those communities being even more susceptible to being missed due to residual concerns about citizenship and/or immigration status question(s).

Table 4: Asian American Immigrants, 2024[44]

Population Group	Total population	Foreign-born	Not a U.S. citizen
Asian alone or in combination with one or more other races	**26,426,274**	**53.3%**	**20.3%**
Asian Indian	5,559,778	65.1%	32.7%

[42] *See* CQR Comments.
[43] Analysis of 2025 Current Population Survey using *IPUMS CPS, University of Minnesota, www.ipums.org*.
[44] The data presented here are 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 choose 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.

Bangladeshi	324,554	69.9%	29.1%
Burmese	249,950	68.7%	24.6%
Cambodian	392,092	40.5%	8.5%
Chinese	6,208,920	53.7%	21.9%
Filipino	4,974,949	43.2%	10.3%
Hmong	379,699	25.5%	3.5%
Indonesian	178,355	48.4%	22.5%
Japanese	1,715,404	20.6%	13.5%
Korean	2,211,632	50.0%	15.7%
Laotian	250,200	42.2%	8.1%
Nepalese	277,448	76.1%	36.6%
Pakistani	706,253	56.3%	15.6%
Sri Lankan	76,678	69.4%	26.9%
Thai	361,318	46.5%	14.9%
Vietnamese	2,445,295	54.9%	11.0%

Source: 2024 American Community Survey, Selected Population Profiles, Table S0201.

Table 5: Percentage of Asian American Immigrant Population Who Are Recent Immigrants, 2024

	Percentage of Population Born Outside of the U.S. who arrived in 2010 or later
Asian American	39.0%
Asian Indian	50.2%
Bangladeshi	55.3%
Burmese	59.2%
Cambodian	23.6%
Chinese	37.8%
Filipino	29.9%
Hmong	13.7%
Indonesian	34.6%
Japanese	40.2%
Korean	22.6%
Laotian	9.7%
Nepalese	70.4%
Pakistani	41.0%
Sri Lankan	43.6%
Thai	35.0%
Vietnamese	28.2%

Source: 2024 American Community Survey, Selected Population Profiles, Table S0201.

The unsuccessful attempt last decade to add an untested and unnecessary question on citizenship to the 2020 Census questionnaire raised serious concerns about a harmful effect on Asian Americans. In addition to the general concerns of immigrants, the 2017

study previously referenced reported 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.'"[45] The Census Bureau made similar findings in their focus group research of Asian Americans leading up to the 2010 Census where many focus group participants found the census confusing, invasive, and potentially threatening, with the incorrect belief that the census was linked to immigration enforcement or the IRS. [46] Leading into the 2020 Census, the Census Bureau's 2020 Census Barriers, Attitudes and Motivators Study ("CBAMS") research found that "the [citizenship] question may impede participation among audiences with recent immigration history. The significance of this barrier will likely vary with individuals' beliefs about the question's purpose, their trust in the government to keep their information confidential, and beliefs about whether their ethnic group is the subject of politically motivated targeting. The barrier was highest among those individuals who believed that the purpose of the question is to find undocumented immigrants, that their information will be shared across agencies—potentially leading to deportation—and that their ethnic group is facing an inhospitable political environment."[47] This was particularly present in the Chinese and Vietnamese focus groups, where many of the participants expressed privacy concerns, especially as it comes to the government sharing information between agencies.[48] Even those with legal status and who did not feel targeted in the research noted that they would likely fail to include people in their household who were not citizens if a citizenship question were added (as was contemplated for the 2020 Census).[49]

Analysis of the Census Bureau's July 2019 Census Test, which was a "nationally representative randomized experiment designed to study the potential impact on self-response of including a citizenship question on the 2020 Census questionnaire," found that tracts that had more noncitizens, Latinos and Asian Americans were less likely to respond when a citizenship question was included.[50] In particular, self-response rates for questionnaires with the citizenship question were statistically significantly lower in areas where the percent of Asian American residents were between 5 and 20 percent.[51] The July 2019 Census Test also found that there was a statistically significantly higher rate of online

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[45] CSM Memo.
[46] 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 ("Asian Focus Groups Report").
[47] Sarah Evans et. al., U.S. Census Bureau, 2020 Census Barriers, Attitudes, and Motivators Study (CBAMS) Focus Group Final Report (2019), https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2020-report-cbams-focus-group.pdf ("2020 CBAMS Focus Group Final Report").
[48] Id.
[49] Id.
[50] U. S. Census Bureau, 2019 Census Test Report (2020), https://www2.census.gov/programs-surveys/decennial/2020/program-management/census-tests/2019/2019-census-test-report.pdf.
[51] Id.

respondents exiting the survey before completing it for the form that included a citizenship question, with the breakoff occurring at a higher rate with the demographic questions (and the citizenship question specifically in the forms with the question).[52]

The current political climate will likely exacerbate these pre-existing and persistent fears of census responses being shared with other agencies to the detriment of respondents, despite the confidentiality protections found in Title 13 against such activity. President Trump's Executive Order 14243 and the resulting activities by the Department of Government Efficiency ("DOGE") to further the order's goals of eliminating "information silos" and promoting inter-agency data sharing has increased public distrust of government.[53] EO 14243 provided DOGE unprecedented access to interagency data, including IRS taxpayer and social security information, as well as state level data, such as Medicaid, SNAP, and voting records.[54] Although DOGE sunset in July 2026, its data-sharing activities were high-profile and drew allegations of misuse by its staff and a significant number of lawsuits,[55] and data consolidation continues. As a result, potential census respondents are likely to be more fearful of the government and of the misuse of their responses. This will translate into depressed participation by many respondents, including Asian Americans. The failure to properly research and test the effects of the proposed rule is yet another reason to urge for the withdrawal of the proposed rule.

Census Bureau Has Not Demonstrated That Administrative Records Can Support Their Use As Proposed in the Rule and Should Not Be Relied Upon For The Proposed Purpose

The preamble of the proposed rule contemplates extensive reliance on records maintained by the Department of Homeland Security, the Department of State, the Department of the Treasury, and other agencies to determine which residents would be excluded from the apportionment count. Yet Census Bureau has not shown that those records can accurately and comprehensively identify the relevant categories. In *Trump v. New York*, the Supreme Court noted unresolved questions about whether administrative records could support exclusion of undocumented immigrants without resulting in impermissible estimation.[56]

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[52] Id.

[53] *See* Partnership for Public Service, The State of Public Trust in Government 2026, Sept. 16, 2026, https://ourpublicservice.org/know-the-facts/resource-library/reports/state-of-trust-2026, Bilal Baydoun, Roosevelt Institute, Blog, What Musk's DOGE Really Cut: Trust, Safety, and Democracy, May 29, 2025, https://rooseveltinstitute.org/blog/what-musks-doge-really-cut-trust-safety-and-democracy/; Faiz Siddiqui, Joseph Menn and Jacob Bogage, DOGE's grab of personal data stokes privacy and security fears, Washington Post (updated Feb. 25, 2025), https://www.washingtonpost.com/business/2025/02/25/elon-musk-doge-data-privacy-security/.

[54] Grace Jin, The Privacy Paradox: How Government Data Has Become Less Private and Less Useful, Center for Democracy & Technology (Aug. 21, 2026), https://cdt.org/insights/the-privacy-paradox-how-government-data-has-become-less-private-and-less-useful/.

[55] Congressional Research Service, Legal Sidebar, Privacy Act Lawsuits and the Department of Government Efficiency (DOGE), Sept. 17, 2025, https://www.congress.gov/crs-product/LSB11370.

[56] 592 U.S. 125 (2020).

Common Cause v. Trump similarly recognized that identifying all undocumented immigrants for exclusion could require statistical estimation inconsistent with enumeration requirements.[57] The federal register notice fails to provide expected error rates, explain how incomplete, stale, or conflicting records will be reconciled, specify how temporary and changing statuses will be identified as of Census Day, or establish a meaningful process through which individuals and jurisdictions can identify and contest erroneous classifications. As such, Census Bureau has not demonstrated that the contemplated systems can perform the rule's assigned function consistently with the constitutional requirement of an actual enumeration.

In fact, Census Bureau's own research shows that relying on administrative records to determine immigration status will produce inaccurate results, particularly for the very population this rule is designed to identify. Not only does Census Bureau need to combine 31 separate sources just to approximate comprehensive coverage of the population, Census Bureau's record-linkage infrastructure itself has known, unresolved limitations and is not suited for the proposed usage in the notice, especially as it relates to utilizing administrative records to identify citizenship and/or immigration status.[58] This simply bolsters the fact that discrepancies found in 2018 by Census Bureau's own researchers between citizenship data reported on surveys and citizenship data drawn from administrative records "are more pervasive than previously reported," and that administrative records "may miss some naturalizations and capture others with a delay."[59] Efforts under the Census Bureau's 2020 Citizen Voting Age Population (CVAP) project affirmed that administrative records were insufficient by themselves to identify citizenship or immigration status, recognizing that statistical estimation was required for a portion of the population that could not be assigned citizenship or immigration status directly from the available administrative records.[60] This is no surprise as the Department of Homeland Security (DHS) itself noted that "linking records between datasets is not likely to be 100% accurate," and explicitly acknowledged the risk that the Census Bureau could use DHS data to assign a person an incorrect immigration status when DHS first agreed to share immigration-related records with the Census Bureau for a comparable purpose in 2019.[61] This is, of course, not unique to just DHS but also other agencies with administrative records being used by the Census Bureau.[62] It is clear that administrative records cannot be used as suggested for the purposes of the proposed rule.[63]

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[57] 506 F. Supp. 3d 39 (D.D.C. 2020).

[58] See CQR Comments ("In January 2026, Census Bureau's research found that immigrants, recent movers, and low-income individuals are among the groups least likely to be successfully matched, which means the very characteristics that make someone relevant to an immigration-status determination are the same characteristics that make them least likely to be linked reliably.")

[59] Id.

[60] Id.

[61] Id.

[62] *See* Id. for more detailed discussion on this topic.

[63] None of this should be taken to mean administrative records have no place in the 2030 Census. Used well and properly, they can reduce cost, reduce respondent burden, and in some cases improve accuracy over field enumeration alone, and Census Bureau's own career researchers are doing serious, careful work toward

The Census Bureau Impermissibly Abandons the Historic "Usual Residence" Framework Without Adequate Explanation.

The proposal replaces the longstanding practice of counting foreign citizens who are "living in" the United States with a rule keyed to immigration status and lawful permanent residence. But *Franklin* instructs that census residence turns on where a person usually lives and sleeps and whether that person maintains an enduring tie to the place—not on formal citizenship or immigration classifications alone. Undocumented immigrants who reside in the United States ordinarily satisfy that standard. Census Bureau offers no evidence that lawful permanent residence is the constitutionally proper dividing line and no principled explanation for excluding visa holders, Temporary Protected Status recipients, refugees, asylees, parolees, or other residents who may have enduring ties to a State. Nor does the proposal adequately explain its departure from Census Bureau's 2020 residence framework or identify why its prior residence determinations were incorrect.

The "usual residence" standard, which is essentially the gloss given to the constitutional phrase "in each State" by the first enumeration Act of 1790, has been the touchstone for determining who must be counted.[64] As the Supreme Court explained in *Franklin*, the term "usual residence" can mean more than mere physical presence and includes some element of allegiance or enduring tie to a place. The relevant distinction is therefore not citizenship status alone, but whether the individual usually lives and sleeps in the United States, as opposed to short-term visitors or transient travelers who are only temporarily present. Undocumented immigrants who live and sleep most of the time at a residence in the United States satisfy this standard, as confirmed by the Census Bureau's 2020 Residence Rule, Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525-01. Thus, the proposed exclusion disturbs 236 years of unbroken practice rooted in the 1790 Census Act, which established the "usual residence" rule without regard to citizenship, length of residence, or intent to stay and radically redefines the concept of "usual residence" to mean where one "lawfully spent the greatest number of days" without any justification.

The proposed, unprecedented 90-day "census enumeration period" flies in the face of law and practicality

Federal law fixes a single reference date for the decennial census: April 1.[65] The proposal seeks to replace the day Congress designated for counting where people live with a three-month long period. Instead of pinpointing a clear and specific day for respondents to reference when filling in their census questionnaire, the Census Bureau would now be

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that goal. *See* CQR Comments for more information about concerns about the use of administrative records for the purposes of identifying citizenship and/or immigration status as well as recommendations on how to assess when and how to use administrative records.

[64] *Franklin v. Massachusetts*, 505 U.S. 788 (1992).

[65] Congress/Census Act?

creating significant confusion by referencing a three-month period during which people must assess which address to consider their "usual residence." Not only will there be confusion for people who move during that three-month period, college students who may finish their school year early, and people with a more transient lifestyle, the specific three-month period is also concerning as it falls squarely within snowbird season for those with multiple homes in different states. In fact, this was the exact problem addressed by the Census Bureau over a century ago. When the 1920 Census was taken on January 1, Census Bureau found "[t]housands who have their usual places of residence in the northern states spend the winter months in California, Florida, and other southern states" and decided to move Census Day to April 1 for the 1930 Census, which was later codified into Title 13 of the U.S. Code.[66]

Proposed Restrictions on the Inclusion of Certain Demographic Questions in the Decennial Census Operation

The proposed reversal of including questions asking about race and ethnicity in the decennial census operation fails to account for the extensive reliance interests of federal, state, and local governments, civil-rights enforcement regimes, redistricting processes, funding programs, and affected communities that depend on those data. The agency's own preliminary regulatory impact analysis acknowledges that decennial race and ethnicity counts are more accurate, comprehensive, and reliable than available alternatives; that the ACS cannot fully substitute for those counts, particularly for small geographic areas and tribal communities; and that eliminating the questions would degrade downstream federal statistics, while failing to quantify any offsetting improvement in response rates or enumeration accuracy.

The Elimination of Race and Ethnicity Questions Disregards Extensive Reliance Interests and Threatens Civil-Rights Enforcement.

Proposed Part 70 would prohibit race and ethnicity questions on the decennial census without grappling with decades of governmental and community reliance on those data, such as the integral nature of census race and ethnicity data to Section 2 Voting Rights Act enforcement, federal and state redistricting analyses, Title VI enforcement, federal funding programs, health-equity monitoring, and equal-employment reporting. The elimination of race and ethnicity questions from the decennial census would effectively eliminate reliable race and ethnicity data on the U.S. population, because surveys and data sets across the government and private sectors depend on census race and ethnicity data.[67]

[66] *See* CQR Comments for a more detailed discussion about the infirmaries of the proposed change to a census enumeration period of three months.
[67] *See* National Conference on Citizenship, A Primer on Census Data: Most Public and Private Statistics Rely on Accurate Census Data, https://ncoc.org/a-primer-on-census-data/.

Such an elimination of the race and ethnicity question is unprecedented as the census has collected data on race and ethnicity in some manner since the first census in 1790. This proposal breaks with over 230 years of practice and reliance by the federal government, state governments, and the private sector. The implications of this proposal go far beyond the decennial census itself as it would **violate multiple civil rights statutes** that require race and ethnicity data in order to be effectively enforced. For Asian American communities, the proposal also disregards decades of federal efforts to obtain disaggregated data. Aggregate national estimates can obscure substantial undercounts and disparities in particular geographic areas and among smaller communities; removing the decennial census's comprehensive demographic benchmark would therefore impose especially serious harms on populations whose needs are already hidden by aggregation.

Governmental Function, Statutory Programs, and Federal Obligations Relying on Census Race and Ethnicity Data That Necessitate the Addition of Race and Ethnicity Question(s) on the Decennial Census Questionnaire

Race and ethnicity data collected through the census serve critical governmental and legal functions. Courts have recognized that "many federal programs do disburse funds based upon population figures as reported in the decennial census," and that "the allocation of state and federal funds is heavily influenced by census figures."[68] The Office of Legal Counsel has likewise recognized that more than 140 statutes depend on population figures or census data for their implementation.[69] For example, race and ethnicity data are specifically central to several interlocking legal regimes, including: (1) Voting Rights Act Section 2 enforcement, which requires analysis of whether minority groups have an equal opportunity to elect representatives of their choice[70]; (2) federal funding formulas under programs such as Community Development Block Grants, HOME Investment Partnerships Program, Emergency Solutions Grants, and Transit Formula Grants; (3) Title VI of the Civil Rights Act enforcement, which prohibits discrimination in federally-assisted programs; (4) equal employment opportunity reporting under EEOC regulations and Management Directive 715; (5) health equity monitoring under federal health-information technology standards that incorporate SPD-15 by reference; and (6) federal, state, and local redistricting processes, where courts and map drawers rely on census race data to evaluate equal protection and Voting Rights Act issues.[71] In *National Urban League v. Ross*, the court found that even a small undercount of hard-to-count populations would result in

[68] *City of Detroit v. Franklin*, 4 F.3d 1367, 1374 (6th Cir. 1993).
[69] The Authority of Census Bureau of the Census to Adjust Population Data for Purposes Other Than Apportionment, 22 Op. O.L.C. 239, 239–40 (1998).
[70] 52 U.S.C. § 10301.
[71] *See,* Leadership Conference on Civil and Human Rights, Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions," (Nov. 2026) for more discussion on statutory requirements and uses of race and ethnicity data from the census.

lost federal funding to local governments, and that the Enumeration Clause reflects a "strong constitutional interest in accuracy" in the decennial census.[72]

Accordingly, eliminating race and ethnicity questions would not merely be a questionnaire-design choice: It would implicate legally significant reliance interests and could impair the administration of multiple federal statutory schemes, including civil-rights enforcement, funding allocation, public-health monitoring, and redistricting.[73] Furthermore, the Preliminary Regulatory Impact Analysis ("PRIA") accompanying the proposed 2030 Census rule identifies a significant tension in the agency's rationale on this proposal. Although the proposal is framed as improving the accuracy of the constitutional population count by removing demographic questions that purportedly suppress participation, the PRIA does not quantify any expected increase in response rates or provide evidence that eliminating race and ethnicity questions would improve enumeration accuracy. Instead, it repeatedly acknowledges that the change would reduce the accuracy, completeness, and geographic precision of federal race and ethnicity statistics.

The agency further recognizes that decennial race and ethnicity totals are more reliable than ACS-derived data and that there are no comparably accurate, comprehensive, and reliable alternative sources.[74] The ACS is a sample survey rather than a universal enumeration; its estimates are unavailable at comparable levels of geographic detail, may be unsuitable for smaller tribal populations, do not cover every geography included in the decennial census, and rely on population controls that are themselves calibrated using decennial census counts. Removing race and ethnicity questions would therefore force federal statistical programs to depend increasingly on modeled, outdated, or less accurate data.

Those acknowledged effects extend beyond the loss of individual survey responses. Decennial race and ethnicity counts provide baseline controls for major federal surveys and support statistics concerning health, poverty, employment, labor-force participation, funding formulas, infrastructure planning, redistricting, and civil-rights enforcement. The PRIA itself supplies record evidence that the proposal would weaken the statistical infrastructure on which governmental programs and historically undercounted communities rely.

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[72] 489 F. Supp. 3d 939, 960–61 (N.D. Cal. 2020).

[73] Nor would eliminating race and ethnicity data advance any interest in "race neutrality." Asking respondents to self-identify their race and ethnicity does not distribute benefits or burdens on the basis of race. No individual is treated differently because of a response, and Title 13 bars using any individual's census information to that person's detriment. See 13 U.S.C. §§ 8(c), 9(a).

[74] U.S. Census Bureau, Preliminary Regulatory Impact Analysis, Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, Docket No. 260903-000 (Sept. 10, 2026), https://www.regulations.gov/document/USBC-2026-0628-0002 ("PRIA").

The loss of race and ethnicity data from the decennial census would harm Asian Americans

Census data serves as the primary source of detailed, disaggregated data on Asian subgroups, without which we would not be able to identify problems in our communities or effectively and efficiently develop solutions. Collecting detailed data is particularly critical for Asian Americans, who are among our nation's fastest growing and most diverse racial groups.[75] Often viewed as homogenous, these communities include more than 50 detailed subgroups that can differ dramatically across key social and economic indicators.

Among Asian Americans, only 6.9% of Indian Americans nationwide live below the poverty line, compared to 18.2% of Bangladeshi and Burmese Americans.[76] Roughly 80.3% of Taiwanese Americans hold a bachelor's degree, yet only 22.7% of Laotian Americans do.[77] Another example is pay equity. While Asian American women are paid an average of 86 cents for every dollar a white man is paid, disaggregated data demonstrate that, for example, Vietnamese and Laotian American women are paid 61 cents for every dollar a white man is paid; for Burmese American women, 53 cents; and for Bhutanese American women, only 38 cents.[78] Although Asian Americans have the lowest uninsured rate of any racial or ethnic group in the aggregate at 5.3%, disaggregated data show a wide range of uninsured rates among Asian groups, with 3.7% of Japanese Americans uninsured to 11.3 % for Burmese Americans.[79]

Census data lay the foundation for the apportioning and redistricting of political representation, the development of effective and efficient policy and planning decisions, and the distribution of more than $2 trillion in federal funds to the states during fiscal year 2021.[80] Without an accurate count, the needs of growing Asian American communities will suffer and not be met. As noted in the comment from 157 national, state and local Asian American, Native Hawaiian and Pacific Islander organizations,

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[75] Bill Chappell, Census Finds A More Diverse America, As Whites Lag Growth, NPR (June 22, 2017), http://www.npr.org/sections/thetwo-way/2017/06/22/533926978/census-finds-a-more-diverse-america-as-whites-lag-growth; Press Release U.S. Census Bureau, 2010 Census Shows Asians are Fastest-Growing Race Group (March 21, 2012), https://www.census.gov/newsroom/releases/archives/2010_census/cb12-cn22.html.

[76] U.S. Census Bureau. "Selected Population Profile in the United States." American Community Survey, ACS 1-Year Estimates Selected Population Profiles, Table S0201, https://data.census.gov/table/ACSSPP1Y2024.S0201?t=-4000G. Accessed on 22 Sep 2026 ("ACS SPP")

[77] Id.

[78] Miriam Yeung, American Association of University Women, Overcoming the "Model Minority" Myth: AAPI Women Are Not Paid Equally (Mar. 15, 2016), on file with author.

[79] ACS SPP.

[80] Press Release, U.S. Census Bureau, Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021(June 2023), https://www.census.gov/library/working-papers/2023/dec/census-data-federal-funds.html.

> in the context of health disparities, in 2018, 87% of all reported Tuberculosis (TB) cases in the U.S. occurred in racial and ethnic minorities.[81] Asian Americans represented 35% of all people reported with TB and had a rate of TB that was 31 times higher than the rate of TB in non-Hispanic whites.[82] Furthermore, detailed race and ethnicity data are equally important. U.S.-born Vietnamese American women are four times more likely to die of breast cancer than any other Asian American group. Korean American children are "four times more likely to have no health insurance as compared to others."[83] Race and ethnicity data, as well as data disaggregation, are critical because they allow us to see these differences. Without these data, broad trends can mask much more negative or nuanced outcomes for specific groups and subgroups of people, leaving their needs and issues invisible and unmet.[84]

Finally, any potential attempts to utilize administrative records to mitigate the harms of removing the race and ethnicity questions from the decennial census form would be unsuccessful. Research looking at the coverage of administrative records for race and ethnicity data shows that the race and ethnicity data points for communities of color are more likely to be missed or incorrectly identified.[85] This becomes particularly problematic for Asian Americans, as the vast majority of data collected by the federal government are limited to the 1997 Office of Management and Budget (OMB) minimum categories, without disaggregated racial subgroup options.[86] The only way to provide the needed data for Asian Americans is to withdraw the rule and retain the race and ethnicity questions on the decennial census form.

The Proposed Rule's Regulatory Classifications (Section III) Rest on Assumptions About the American Community Survey that the Census Bureau's Own Analysis Contradicts

Section III of the proposed rule (Classification) concludes that the rule is not economically significant, would not have a significant economic impact on a substantial number of small entities, has no federalism implications, and contains no information collection requirements.[87] Each of those determinations depends, expressly or implicitly, on a single

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[81] Centers for Disease Control and Prevention, Health Disparities in Asian People (Jan. 25, 2024), https://www.cdc.gov/health-disparities-hiv-std-tb-hepatitis/populations/asian.html.
[82] Id.
[83] Pfizer, Health Disparities Among Asian Americans and Pacific Islanders, https://www.pfizer.com/news/articles/health_disparities_among_asian_americans_and_pacific_islanders.
[84] Comments from 157 AANHPI organizations in response to the federal register notice.
[85] Asian Americans Advancing Justice – AAJC, Assessing Availability and Quality of Administrative Records for Asian Americans and Native Hawaiians and Pacific Islanders: Recommendations for the Future, http://advancingjustice-aajc.org/sites/default/files/2025-02/AdRex%20Final%20Report.pdf (AAJC Administrative Records Final Report).
[86] Id.
[87] *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions*, 91 Fed. Reg. 57,524, 57,528 (proposed Sept. 10, 2026).

premise: that the American Community Survey (ACS) and other sources can supply the race and ethnicity data the decennial census would no longer collect. The preamble emphasizes that Census Bureau is not proposing any restriction on its ability to ask demographic questions on the ACS,[88] and the Regulatory Flexibility Act certification rests on the assertion that information small governmental entities use to obtain funding "would remain available or could be obtained in other ways."[89] Census Bureau's own PRIA refutes that premise. Because the classification determinations depend on a factual assumption that the agency's own record contradicts, they cannot stand as written.

The PRIA Concedes That the ACS Cannot Replace Decennial Race and Ethnicity Data

As discussed above, the PRIA acknowledges that decennial race and ethnicity totals are more reliable than ACS-derived data and that there are no comparably accurate, comprehensive, and reliable alternative sources. It further concedes that removing the questions would force reliance on outdated or less accurate data.[90] The PRIA also identifies why the ACS cannot fill the gap: the ACS is a sample survey, not a full count; its one-year estimates are generally available only for populations of 65,000 or more; it does not cover every geography included in the decennial census; its estimates may be unsuitable for some smaller tribal populations; and its weighting relies on population controls that are themselves calibrated to decennial census counts.[91] Put simply, the ACS's race and ethnicity estimates are only as reliable as the decennial benchmark the proposed rule would eliminate, and they would degrade over time without it.

The detailed Asian American subgroup data presented in this comment are drawn from ACS tables that are weighted to population controls anchored in decennial census counts. Without a decennial race and ethnicity benchmark, those detailed-group estimates, already the least precise for smaller communities, would become progressively less reliable, at precisely the level of detail on which Asian American communities depend.

The Regulatory Flexibility Act Certification Rests on a Factual Premise the PRIA Contradicts

An agency may forgo an initial regulatory flexibility analysis only if it certifies that a rule will not have a significant economic impact on a substantial number of small entities and publishes "a statement providing the factual basis for such certification."[92] The only factual basis offered here is that the information small governmental entities use to obtain funding would remain available or could be obtained in other ways, and that any impact would be

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[88] 91 Fed. Reg. at 57,527–28; *see also* Proposed 15 C.F.R. § 70.4, 91 Fed. Reg. at 57,530.
[89] 91 Fed. Reg. at 57,528.
[90] PRIA at 13, 15.
[91] PRIA at 9 (sample survey); *id*. at 12-13 (65,000 threshold); *id*. at 14, 17 (Island Areas); *id*. at 0, 14-15 & n.16 (tribes), *id*. at 12-13 & n. 11 (intercensal population controls).
[92] 5 U.S.C. § 605(b).

indirect.[93] That statement cannot be reconciled with the PRIA's acknowledgment that no comparably accurate and reliable alternative exists. The mismatch is starkest for the very entities the statute protects. The Regulatory Flexibility Act defines a "small governmental jurisdiction" as a local government with a population of less than 50,000.[94] By the PRIA's own account, ACS one-year estimates are unavailable for populations below 65,000. Every small governmental jurisdiction therefore falls below the threshold at which Census Bureau's proposed substitute produces annual estimates, and would be left to rely on multi-year or modeled figures, the outdated or less accurate data the PRIA itself describes. Whatever Census Bureau's view of the statute's reach to indirectly affected entities, the factual basis it has published for the certification is inaccurate, and Census Bureau should correct it and analyze these impacts before proceeding.

The Rule Is Economically Significant Under Executive Order 12866

Census Bureau classifies the rule as significant, but not economically significant, under section 3(f)(1) of Executive Order 12866.[95] That provision is not limited to rules with an annual effect on the economy of $100 million or more; it also reaches rules that may "adversely affect in a material way . . . State, local, or tribal governments or communities."[96] The PRIA identifies federal and state grant formulas, population controls for major federal surveys, poverty and unemployment statistics, and infrastructure planning data as depending on decennial race and ethnicity counts,[97] and census-derived data guided decisions about allocating trillions of dollars in federal funding to the states in fiscal year 2021 alone. A rule that Census Bureau concedes will reduce the accuracy of data used to allocate funds on that scale, and that would also remove an entire class of residents from the apportionment base, may plainly affect state, local, and tribal governments and communities in a material way. Yet the PRIA quantifies neither those costs nor any offsetting benefit, including the increase in response rates on which the preamble relies. Executive Order 12866 directs agencies to adopt a regulation "only upon a reasoned determination that the benefits of the intended regulation justify its costs."[98] Census Bureau has not made that determination.

The Federalism Determination Disregards the Rule's Direct Effects on the States

Census Bureau asserts that the rule has no federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

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[93] 91 Fed. Reg. at 57,528; *see also* PRIA at 4 (basing certification on the assertion that the rule "would have no direct impact on any entity other than the Census Bureau").
[94] 5 U.S.C. § 601(5).
[95] 91 Fed. Reg. at 57,528; PRIA at 4.
[96] Exec. Order No. 12,866, § 3(f)(1), 58 Fed. Reg. 51,735, 51,738 (Oct. 4, 1993).
[97] PRIA at 15.
[98] Exec. Order No. 12,866, § 1(b)(6), 58 Fed. Reg. at 51,736.

various levels of government.[99] That conclusion is difficult to square with the rule itself. The residence criteria would change the population base used to apportion seats in the House of Representatives among the States—an effect on the States that is direct by definition, and one the preamble acknowledges by citing State litigation and a State petition for rulemaking as context for the change.[100] The demographic-question restrictions would likewise eliminate the decennial race and ethnicity data that States receive for redistricting,[101] and the PRIA concedes the ACS is not available at comparable levels of geographic detail. The ACS does not produce estimates at the census-block level on which redistricting depends. Census Bureau should withdraw its federalism determination and consult with State and local officials as Executive Order 13132 requires.[102]

Census Bureau's Paperwork Reduction Act and Response-Burden Rationale Treats the ACS Inconsistently

The proposed rule states that it contains no information collection requirements under the Paperwork Reduction Act, while simultaneously invoking response burden as a justification for removing race and ethnicity questions and inviting comment on a new legal-status question for the questionnaire.[103] Census Bureau cannot rely on burden-reduction principles to justify reshaping the questionnaire while disclaiming any Paperwork Reduction Act implications of doing so. Any change to the decennial questionnaire, including the addition of a legal-status question, is a collection of information subject to that statute's requirements, including public notice and comment on the instrument and a demonstration of practical utility.[104]

Census Bureau's treatment of the ACS compounds the inconsistency. To support its claim that fewer questions yield higher response rates, the preamble relies on research concerning the ACS.[105] Yet the rule preserves race and ethnicity questions on the ACS—a longer survey to which, as with the decennial census, responses are required by law.[106] If, as Census Bureau contends, race and ethnicity questions are sensitive enough to depress response and of sufficiently reduced need to fail the Privacy Act's "relevant and necessary" standard,[107] that reasoning would apply with at least equal force to the ACS. Conversely, if the ACS questions remain necessary, as Census Bureau's decision to retain them indicates, Census Bureau has not explained why identical questions on the decennial census are not. An agency acts arbitrarily when it offers "an explanation for its decision that

[99] 91 Fed. Reg. at 57,528.
[100] *Id*.
[101] *See* 13 U.S.C. § 141(c).
[102] *See* Exec. Order No. 13,132, § 6, 64 Fed. Reg. 43,255 (Aug. 4, 1999).
[103] 91 Fed. Reg.
[104] *See* 44 U.S.C. §§ 3502(3), 3506(c), 3507.
[105] 91 Fed. Reg.
[106] *See* 13 U.S.C. § 221.
[107] 91 Fed. Reg.

runs counter to the evidence before the agency."[108] Relying on the ACS both as proof that demographic questions depress response and as the solution for collecting those same data is precisely that kind of explanation.

Tribal Consultation Must Precede, Not Follow, Census Bureau's Decision[109]

Finally, Census Bureau states only that it plans to notify tribes and conduct a tribal consultation.[110] But the PRIA itself recognizes that ACS estimates may not be suitable for some smaller tribal populations: a specific, acknowledged harm to tribal communities. Executive Order 13175 requires an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."[111] That consultation must occur before Census Bureau settles on a rule that its own impact analysis identifies as depriving those communities of usable data.

In short, the Classification section treats the ACS as a ready substitute for decennial race and ethnicity data while Census Bureau's own analysis explains why it is not. Census Bureau should withdraw the rule. At a minimum, it must revisit each classification determination, prepare a full regulatory impact and regulatory flexibility analysis that quantifies both the costs the PRIA identifies and any claimed response-rate benefit, and complete the required State, local, and tribal consultation before proceeding.

Need for an Extension for public comment and robust public engagement on the Proposed Residence Criteria and Demographic-Question Restrictions

The Census Bureau must meaningfully engage the public about its proposed plans for the 2030 Census as it has in previous decades. The current proposed rule regarding the Residence Criteria and proposed prohibition on certain demographic questions would significantly change the form and content of the decennial census from accepted practices of almost 250 years and 24 censuses with far-reaching and drastic implications.

The process of establishing the residence criteria has historically been a multi-year process. For the 2020 Census, there were multiple avenues by which the Census Bureau solicited public input. In addition to meeting with advocates directly and soliciting feedback through their advisory committee structures throughout the decade, the Census Bureau provided three Federal Register opportunities over nearly three years (May 2015, June 2016, Feb. 2018), each with a summary of and response to prior comments:

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[108] *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
[109] *See also*, Native American Rights Fund, Comment to the Census Bureau re: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions" (Nov. 2026) for a more in-depth discussion about this topic.
[110] 91 Fed. Reg. at 57,528; PRIA at 10, 14.
[111] Exec. Order No. 13,175, § 5(a), 65 Fed. Reg. 67,249, 67,250 (Nov. 9, 2000.
.[112] 2020 Decennial Census Residence Rule and Residence Situations, 80 Fed. Reg. 28,950 (May 20, 2015).

- On May 20, 2015, the Census Bureau requested public comment on the "2010 Census Residence Rule and Residence Situations" through the Federal Register, to determine if changes should be made for the 2020 Census.[112]
- On June 30, 2016, the Census Bureau requested public comment on the proposed "2020 Census Residence Criteria and Residence Situations" through the Federal Register.[113]
    - This publication also included a summary of comments received in response to the May 20, 2015 Federal Register notice, as well as the Census Bureau's responses to those comments.
    - On July 25, 2016, the Census Bureau extended the comment period by an additional 31 days, from August 1, 2016, to September 1, 2016, citing the scope of the proposal and requests for more time.[114]
- On February 8, 2018, the Census Bureau published the final "2020 Census Residence Criteria and Residence Situations" through the Federal Register.[115]
    - This publication also included a summary of comments received in response to the June 30, 2016 Federal Register notice, as well as the Census Bureau's responses to those comments.

The current public comment period is insufficient for the task at hand. Even with the extension to the initial 33-day public comment period of an additional 20 days, [116] there is still not enough time for the public to fully engage in light of the proposed rule's deviation from historic precedent and long-standing standards, as well as the seriousness and importance of the changes. Especially with the Secretary of Commerce's termination of Census Bureau advisory committees, the public comment period should be further extended to ensure there is ample opportunity for the public—including state and local, and Tribal governments, businesses, demographers, civil rights and other nonprofit organizations, researchers, and legal scholars—to properly evaluate and respond to these changes.[117] This will help promote public trust in the decennial census. There should be at a minimum a full 90-day comment period.

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[112] 2020 Decennial Census Residence Rule and Residence Situations, 80 Fed. Reg. 28,950 (May 20, 2015).
[113] 81 Fed. Reg. 42,577.
[114] Proposed 2020 Census Residence Criteria and Residence Situations; Extension of Comment Period, 81 Fed. Reg. 48,365 (July 25, 2016).
[115] Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525 (Feb. 8, 2018).
[116] *See* Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, Docket No. 260903-0005 (unpublished scheduled for Oct. 5, 2026), https://www.federalregister.gov/public-inspection/2026-20328/decennial-census-of-the-population-of-americans-proposed-residence-criteria-and-proposed-regulations; Request for Extension of Comment Period for Proposed Rule: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions" for an in-depth discussion about the insufficient comment period and the need for an extension.
[117] Letter from Leadership Conference on Civil and Human Rights et al, to Howard Lutnick, Secretary, Department of Commerce (May 7, 2025), https://civilrights.org/wp-content/uploads/2025/05/Updated-Final-LCCHR-Census-Advisory-Committee-Letter-.pdf.

Conclusion

While the Census Bureau may have some discretion to determine WHERE people are counted, the Constitution defines who should be counted, and the Census Bureau cannot change the Constitution unilaterally. The Census Bureau's mission is to count every person once, only once, and in the right place but this rule seeks to define who should be counted and how (through the prohibition of including race/ethnicity question(s) on the decennial census form), not where. Comparing the Census Bureau's 2018 final residence criteria with the current proposed rule reveals a telling difference in how Census Bureau describes its task. In 2018, Census Bureau stated that it was "committed to counting every person in the 2020 Census once, only once, and in the right place."[118] The proposed rule instead describes counting "every person who should be counted once, only once, and in the right place." Not only does the proposed rule arrogate to itself a new mandate to define "who should be counted," in violation of existing law, including the Constitution, it would do irreparable harm to the quality of census data collected and produced by the 2030 Census and future censuses.

Advancing Justice – AAJC urges the immediate withdrawal of the proposed rule and the start of a new process to develop the residence criteria for the 2030 census that includes meaningful public engagement. Under no circumstances should the proposal to prohibit the existing race and ethnicity questions from the decennial census form be further considered.

Sincerely,



Terry Ao Minnis
Vice President of Census and Voting Programs
Asian Americans Advancing Justice – AAJC

[118] Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525, 5526 (Feb. 8, 2018); see also Proposed 2020 Census Residence Criteria and Residence Situations; Extension of Comment Period, 81 Fed. Reg. 48,365, 48,365 (July 25, 2016) (same).