

March 22, 2018

The Honorable Secretary Wilbur Ross
U.S. Department of Commerce
1401 Constitution Avenue NW
Washington, DC 20230

Dear Secretary Ross:

We the undersigned legal organizations write to urge you to reject the Department of Justice's request that you add a mandatory question to the 2020 Census asking all persons to divulge their citizenship status. A new, untested citizenship question would be an end-run around the Constitution's text, history, and values. It cannot be squared with the federal government's constitutional obligation to ensure a national count of all persons—regardless of where they are from or their immigration status.

Our Constitution establishes a democracy premised on the idea that all persons deserve equal representation in our government. To ensure a proper count of the nation's population and a proper apportionment of representatives, the Constitution explicitly requires an "actual Enumeration" of the people, imposing on the federal government the duty to count the "whole number of persons in each State."¹ This critical constitutional language imposes a clear duty on the federal government: it must count *all* people living in the United States, whether they are citizens or non-citizens, whether they were born in the United States or in a distant part of the world. As the Constitution's text and history dictate, the Constitution requires the federal government to count "the whole body of the people" without exception.² It draws no distinction between citizens and non-citizens, but rather requires that the "whole immigrant population should be numbered with the people and counted as part of them."³

Adding the new citizenship question proposed by the Department of Justice would undermine the Census Bureau's constitutional commitment to count all persons. It would also result in inaccurate data, thereby biasing congressional apportionment, redistricting, and funding decisions, for an entire decade, and producing harmful inequalities which would last even longer. Overwhelming evidence shows that this new question, if it becomes a part of the 2020 Census, will deter participation by immigrants across the country, who do not want an official record of their immigration status and fear that their responses will be used by the government to harm them and their families. The Census Bureau's own data demonstrates "an unprecedented groundswell in confidentiality and data sharing concerns, particularly among immigrants or those who live with immigrants."⁴ In the run up to the 2020 Census, "researchers heard respondents express new

¹ U.S. Const. art. I, § 2, cl. 3; amend. XIV, § 2.

² Cong. Globe, 39th Cong., 1st Sess. 385 (1866).

³ *Id.* at 432.

⁴ Mikelyn Meyers, U.S. Census Bureau, *Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census* 15 (Nov. 2, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf>.

concerns about topics like the ‘Muslim Ban,’ discomfort ‘registering’ other household members by reporting their demographic characteristics, the dissolution of the ‘DACA’ . . . program, [and] repeated references to Immigration and Customs Enforcement.”⁵ Adding a citizenship question to the 2020 Census—given the overwhelming evidence that it will chill participation and produce inaccurate responses—would break faith with the Constitution’s mandate for a head count of the entire nation.

Although the Department of Justice urges the addition of a citizenship question to the 2020 Census, it offers no reason to doubt what the latest Census Bureau data shows: asking all persons to divulge their citizenship status will chill participation by noncitizens and citizens alike and produce inaccurate data. Instead, the DOJ maintains that a new citizenship question will ensure better enforcement of the Voting Rights Act. This is false. Since the passage of the Voting Rights Act in 1965, the Census has never asked all persons to report their citizenship. In other words, a mandatory question on citizenship has never been necessary to ensure robust protection of the right to vote. That is just as true now as it was in 1965 when the Voting Rights Act was passed.

The Justice Department’s effort to game the Census and manipulate the national head count our Framers wrote into the Constitution should be rejected. Failing to count *all* persons in the United States, as the Constitution mandates, would deal a huge blow to our democracy. The stakes are high, and there are no do-overs permitted—we must get it right, and get it right now.

Sincerely,

Asian Americans Advancing Justice--AAJC
Campaign Legal Center
Constitutional Accountability Center
Democracy Forward
Lawyers’ Committee for Civil Rights Under Law
NAACP Legal Defense and Education Fund, Inc.
United To Protect Democracy
Voting Rights Institute

cc: Donald F. McGahn, White House Counsel
Michael J. Walsh, Jr., Deputy General Counsel, Department of Commerce
Hon. Ron Johnson, Chairman, Senate Homeland Security and Governmental Affairs Committee
Hon. Claire McCaskill Ranking Member, Senate Homeland Security and Governmental Affairs Committee
Hon. Trey Gowdy Chairman, House Committee on Oversight and Government Reform
Hon. Elijah Cummings Ranking Member, House Committee on Oversight and Government Reform

⁵ Memorandum from Ctr. for Survey Measurement to the Assoc. Directorate for Research & Methodology, Re: Respondent Confidentiality Concerns 1 (Sept. 20, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.

