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VIA FEDERAL e-RULEMAKING PORTAL

Daniel Sweeney
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Office of the General Counsel
U.S. Department of Commerce
ADDEMO/FRN
4600 Silver Hill Road
Washington, D.C. 20746

RE: Public Comment on Proposed Rule: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions,"
Agency/Docket Number: 260903-0005
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Dear Mr. Sweeney:

On behalf of Advancing American Freedom's almost 170,000 supporters, we are filing this comment supporting the proposed rule of the Census Bureau of the Department of Commerce, "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions."

Advancing American Freedom is a nonpartisan organization dedicated to defending the Constitution and the rule of law and advancing freedom, liberty, and opportunity for all Americans through public engagement and advocacy. That includes guarding against attempts to divide us as a people based on race and ethnicity, as well as protecting the security and integrity of elections and ensuring that the political representation of citizens is not diluted by the inclusion of aliens in the voting and apportionment process.

Aliens should have no part in the democratic process that maintains our Republic.

Residence Criteria §60.4 – Foreign citizens in the United States

We support the Census Bureau's expansion of residence criteria to exclude foreign citizens who are not citizens of the United States. However, the rule proposes to continue to include permanent resident aliens. We recommend that all aliens, legal or illegal, including permanent resident aliens, be excluded from the apportionment process. Unlike citizens, aliens, whether here legally or illegally, temporarily or permanently, have not pledged political allegiance to the United States, have not assumed any of the responsibilities that are part of citizenship, and can lose their status at any time.

Under Section 2 of the Fourteenth Amendment, "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State." As the U.S. Supreme Court held in *Franklin v. Massachusetts*,[1] the phrase "person in each State" used in the Constitution and federal law "mean[s] more than mere physical presence" and may be used broadly "to include some element of allegiance or enduring tie to a place."

Aliens here legally or illegally, including tourists, temporary visitors such as students, and permanent residents, have no "element of allegiance" to the United States or the state in which they may be residing; they owe their allegiance politically and legally to the nation of which they remain a citizen. They cannot have an "enduring tie" to any location within the United States since they can be removed from the country at any time if they are here illegally, while those here lawfully can also be removed if their visa or otherwise lawful presence is terminated by the executive branch that has been provided with virtually plenary authority to make that determination.

In the 2020 census, the "Residence Criteria" use by the Census Bureau – following similar rules used in prior censuses – excluded aliens who were lawfully "visiting the United States, such as on a vacation or business trip." It seems obvious that the reasons for excluding such aliens who are here temporarily "on a vacation or business trip" from the census population count applies equally to all aliens who are present in the United States and apply with even greater importance to those who are here illegally and have no lawful presence in the country.

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[1] 505 U.S. 788, 804 (1992).

As the NPRM correctly concludes, illegal aliens "are not true inhabitants, members of the body politic, or persons with a 'usual residence' in the United States due to their lack of a sufficient tie and allegiance to the United States."

Relevant to the appropriateness of excluding aliens from apportionment is the opinion by then-Judge Brett Kavanaugh of the U.S. Court of Appeals for the District of Columbia in *Bluman v. FEC*, which upheld the federal ban on aliens directly or indirectly funding any candidates or independent political expenditures in federal, state, or local elections against a First Amendment challenge:

> The Supreme Court has long held that the government (federal, state, and local) may exclude foreign citizens from activities that are part of democratic self-government. For example, the Supreme Court has ruled that the government may bar aliens from voting, serving as jurors, working as police or probation officers, or teaching at public schools. Under those precedents, the federal ban [on campaign spending] readily passes constitutional muster.[2]

Apportionment that determines the parameters of political representation is obviously one of the most fundamental parts of "democratic self-government."[3]

Adding a Citizenship Question

We strongly recommend adding a legal status or citizenship question to the standard Census form, the same type of standard question that has been on the American Community Survey since its inception and use by the Census Bureau in 2000.

In fact, the first citizenship question was on the 1820 census following a recommendation from Thomas Jefferson that the census contain a question to help determine "the respective numbers of native citizens, citizens of foreign birth, and of Aliens."[4] The U.S. Marshalls conducting the 1820 census began asking a question about "foreigners not naturalized."[5] In fact, as the Supreme Court noted in *Department of Commerce v. New York*, with the exception of the 1840 census, there was a citizenship question in every census from 1820 to 2000, and it was then continued in the American Community Survey.[6]

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[2] 800 F.Supp.2d 281, 286-287 (D.D.C. 2011), *aff'd,* 565 U.S. 1104 (2012).
[3] See Hans von Spakovsky, *Symposium: Trump's census policy is both fundamentally fair and legally sound*, SCOTUSblog (Nov. 25, 2025), https://www.scotusblog.com/2020/11/symposium-trumps-census-policy-is-both-fundamentally-fair-and-legally-sound/.
[4] *See* Julian Parks Boyd, ed., *The Papers of Thomas Jefferson, Volume 31: 1 February 1799 to 31 May 1800* (Princeton University Press, 1958), p. 293.
[5] National Archives and Records Administration, *1820 Federal Census*.
[6] 588 U.S. 752 (2019).

Obtaining accurate information on the number of citizens and the number of aliens present in the country is vital for many different reasons. Although the constitutional purpose of the census is apportionment, census data is now used for many other purposes such as federal grants and benefits, the drafting of legislation by Congress and state legislatures, urban and regional planning, and business and education planning and development. Having accurate data on citizens and aliens is a fundamental requirement for accurately and effectively engaging in such activities.

Opponents of adding a citizenship question contend it will significantly reduce responses to the census, although that has apparently not been a problem with its inclusion in the American Community Survey for the past 26 years or in the many prior censuses that included a citizenship question. As pointed out in *Department of Commerce v. New York*, the United Nations recommends collecting census-based citizenship information, and other major democracies including Australia, Canada, France, Indonesia, Ireland, German, Mexico, Spain, and the United Kingdom, inquire about citizenship in their census.

Several states in the *Department of Commerce v. New York* decision alleged "that if noncitizen households are undercounted by as little as 2% — lower than the District Court's 5.8% [predicted reduction] — they will lose out on federal funds that are distributed on the basis of state population."

That 5.8% figure comes from a study first released in 2018 and revised in 2019 that compared the quality of citizenship data in government records with what individuals reported in federal surveys.[7] In a footnote on the uncertainties in their findings, the authors wrote:

> A preferable test would be a randomized control trial (RCT) comparing self-response rates where some households are randomly chosen to have an 11-question Census questionnaire with a citizenship question (the treated group), and a randomly chosen set of control households receive a 10-question Census questionnaire without citizenship.

The Census Bureau's 2019 Census Test was exactly that kind of randomized trial and the test report's executive summary cites the study's call for one.[8] Across the whole population sampled, not just of noncitizen households, the test found no statistically significant drop (that is, no gap larger than would be reasonably explained by chance) in the share of the population that answered the census on their own.

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[7] As noted in *Department of Commerce v. New York*, an initial 2018 estimate of 5.1% was updated in 2019 to the referenced 5.8%.

[8] U.S. Census Bureau, Decennial Statistical Studies Division & American Community Survey Office, *2019 Census Test Report: A New Design for the 21st Century* (Version 1.0 (Revised), reissued Jan. 3, 2020), https://www2.census.gov/programs-surveys/decennial/2020/program-management/census-tests/2019/2019-census-test-report.pdf.

Critics have raised two concerns. First, the test found statistical drops in certain subgroups of households. Second, it lacked full language support and did not include the in-person follow-up the Bureau makes to households that do not respond to the census. On the first point, however, the differences were still rather small.

Reasonably assuming that most if not all of the differences came from aliens, none of the differences in main subgroups reached 2%, the smallest undercount the Court found sufficient to cost states federal funds. This includes differences in areas where this assumption is more reasonable because they contain a disproportioned share of alien residents. Though fuller language support and follow-up visits might have changed the results, leaning on this assumption would just replace one untested bias with another. However, the tested results show that the key 5.8% claim does not hold up.

The citizenship question has long historical precedent; there is little evidence that the citizenship question would do harm on any significant scale; and no feasible test could answer every concern about the question's effects. A citizenship question should be restored to the 2030 decennial short-form questionnaire.

Restrictions on the inclusion of certain demographic questions. § 70.2

We support eliminating the collection of information on race and ethnicity, which is based on racial stereotypes and artificially-created racial and ethnic categories and classifications that are used for only one purpose: to divide Americans as a people and to engage in unlawful discriminatory conduct in employment, college admissions, public contracting, and other nefarious purposes.

This applies equally to the collection of information on sexual orientation, which has no place as a valid question in the census. It has no relevance whatsoever to apportionment or for any of the other purposes for which census data is legitimately used. Indeed, the sexual preferences of individuals are entitled to the greatest possible confidentiality and privacy protection. And yet under federal law, 13 U.S.C. § 221, any American who refuses to answer this or any other question on the census form can be criminally prosecuted.

Section 221 has an exception providing that no individual can be "compelled to disclose information relative to his religious beliefs or to membership in a religious body." Questions about sexual orientation should be entitled to the same level of protection.

The history of the collection of racial and ethnic data is a sordid one. Categories such as "Hispanic" and "Asian" were synthetically engineered classifications created arbitrarily by advocacy and special interest groups that are divorced from any biological or other anthropological basis. Their invidious purpose was to use that data to push repugnant policies of proportional representation; racial and ethnic redistricting; and racial and ethnic quotas and preferences in hiring, college admissions, and distribution of public benefits.

Classifying someone as "Hispanic" simply because they have a Spanish surname makes no sense when his family has been in the United States since the Spanish settlement of southern California three centuries ago or in Texas since it became a state in 1845. Yet an individual who just immigrated from Spain or Mexico is put in the same artificial category. Even that makes no sense given that Mexico has been independent from Spain since 1821 and, due to the original tribal inhabitants of Mexico including the Aztecs, Mexicans today are descended from a wide variety of mixed-race descendants, very different from the population of Spain.

Similarly, it makes no sense to classify an individual as "Black" when he is born of mixed-race parents, who may themselves have come from mixed-race parents or may have had a "Black" ancestor somewhere back in their family's distant past. The "Asian" classification used by the Census Bureau also makes no sense given the huge size of the Asian continent with its many countries and its wide array of very different tribal and ethnic groups, histories, cultures, and societies.

These artificial categories have also been used to promote and justify "identity politics" to achieve political power by dividing the nation and the public into adversarial identity groups.[9] The prohibition on racial discrimination in the U.S. Constitution and multiple federal laws justifies ending the collection of faulty information that has been misused to poison American culture and to perpetuate discrimination. By asking questions about race, the census codifies bigotry and a racialist mentality that robs Americans of a sense of unity.

Dubious Statistical Methods Used in the Census

The Census Bureau should also eliminate the use of any estimates or other approximations for counting the population that can lead to serious errors. As the Bureau admitted in its 2020 Post-Enumeration Survey, it made substantial errors that *overcounted* the populations of Delaware, Hawaii, Massachusetts, Minnesota, New York, Ohio, Rhode Island, and Utah. The Bureau *undercounted* the populations of Arkansas, Florida, Illinois, Mississippi, Tennessee, and Texas.

The size of the errors in these 14 states ranged from a low of 1.49% (Ohio) to as high as 6.79% (Hawaii). These errors were so substantial that it affected reapportionment, depriving some states of additional congressional seats they should have received and benefiting other states that retained seats they should have lost. Such errors are simply unacceptable, particularly because there is no legal process that can correct such flagrant apportionment mistakes that affect the political representation of states and their residents for years until the next census.[10]

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[9] *See generally* Mike Gonzalez and Hans A. von Spakovsky, *Eliminating Identity Politics from the U.S. Census*, The Heritage Foundation, Backgrounder No. 3327 (June 29, 2018).

[10] Hans A. von Spakovsky, *Census Bureau Errors Distort Congressional Representation for the States*, The Heritage Foundation. Legal Memorandum No. 308 (August 2, 2022).

Only an "actual Enumeration" should be conducted by the Census Bureau as required by Art. II, § 1, cl. 2 of the Constitution.

Conclusion

The changes being proposed by the Census Bureau for the 2030 census are supported by historical and judicial precedent and are in the best interests of protecting the political rights and liberties of the American public and our democratic Republic.

We support them in full, although we recommend that they go even further in ensuring that only citizens are included in apportionment and that the government stop collecting irrelevant and artificial demographic data on race, ethnicity, and sexual orientation that has been abused to violate laws against discrimination and the principle of equal protection under law required by the Constitution.

Sincerely,



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