



ALEX PADILLA
CALIFORNIA SECRETARY OF STATE

August 7, 2018

Jennifer Jessup
Departmental Paperwork Clearance Officer
Department of Commerce, Room 6616
14th and Constitution Avenue NW,
Washington, DC 20230
VIA US MAIL & EMAIL (PRAComments@doc.gov)

RE: Public Comment Docket Number USBC-2018-0005

Dear Ms. Jessup:

I write as California's Secretary of State to oppose the United States Department of Commerce's decision to add a citizenship question to the 2020 Census. Commerce Secretary Wilbur Ross' decision to add a citizenship question effectively eliminates any possibility of conducting a fair and accurate 2020 Census count, in direct contravention of the Bureau's mandate as defined in the United States Constitution.¹

Since the very first census in 1790, the federal government has conducted a national population count. The United States Constitution is clear in requiring a count of everyone in the country to determine equitable distribution of federal funding and congressional representation. However, Secretary Ross' decision to include a citizenship question irresponsibly disregards the advice of the Census Bureau's own scientific advisors and advisory committees and needlessly ignores the constitutional imperatives that require every person to be counted.

Secretary Ross' Decision Ignores Census Bureau Concerns Regarding Impact of Citizenship Question

The Census Bureau's Center for Survey Measurement (CSM) employs a variety of quantitative research methods, including focus groups, to understand public perceptions of public facing materials. CSM research provides clear and compelling evidence that a citizenship question could result in a decreased 2020 Census count for immigrant communities.

¹ See U.S. CONST. art I, sec. 2.

In its September 20, 2017 memorandum, "Respondent Confidentiality Concerns," CSM documented an increase in concerns over confidentiality as part of its 2017 pretesting studies.² For example, CSM notes that Field Representatives (FRs) conducting sample interviews "reiterated that the main issue they saw was privacy concerns of Latino respondents, and that FRs should do more practice interviews where someone models those concerns and concerns about immigration so that the FRs are more prepared to respond adequately in the field."³ A more recent summary of focus group efforts indicated "[n]on-response, fear, and law enforcement activities were salient in many focus groups and concerns varied across languages."⁴ The fear of government workers expressed by these communities is palpable and understandable in an environment that has become increasingly hostile to immigrants.⁵ Unsurprisingly, a respondent in the Spanish focus group stated:

*"With the situation that we are all living through at this moment in the country, the insecurity that a large part of the Hispanic community is suffering from, I think that [Census interviewers will] have to...be a little sensitive to this situation.... 'Don't worry!...None of the information you give me here will affect you in terms of your immigration status. We understand the situation the country is living through, that Hispanics feel a little frightened.'"*⁶

Despite the statutory requirement that respondents' answers be kept confidential, (see e.g. 13 U.S.C. § 9), the United States government has in the past violated federal confidentiality laws. In 1942, then-Commerce Secretary J.C. Capt provided information to the military about the location of persons of Japanese ancestry which led to their forcible incarceration and internment.⁷ When questioned specifically about the Japanese internment during his campaign, Trump would not say whether he would have supported Japanese internment camps.⁸

² Center for Survey Measurement (CSM), "Respondent Confidentiality Concerns," U.S. Census Bureau (Sept. 20, 2017) available at <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.

³ See *id.*

⁴ Mikelyn Meyers and Patricia Goerman, "Respondent Confidentiality Concerns in Multilingual Pretesting Studies and Possible Effects on Response Rates and Data Quality for the 2020 Census," U.S. Census Bureau (May 16-18, 2018 presentation) (available at <https://census.gov/content/dam/Census/newsroom/press-kits/2018/aapor/aapor-presentation-confidentiality.pdf>),

⁵ See *id.*

⁶ See *id.*

⁷ Seltzer, William; Anderson, Margo, "After Pearl Harbor: The Proper Role of Population Data Systems in Time of War," available at https://ww2.amstat.org/about/statisticianinhistory/blocks/dsp_paperinfo.cfm?PaperID=1&pf=yes.

⁸ Lindsey Bever, "Internment camps? 'I certainly hate the concept,' Donald Trump says," Washington Post (Dec. 8, 2015) available at https://www.washingtonpost.com/news/post-politics/wp/2015/12/08/trump-on-internment-camps-i-certainly-hate-the-concept/?noredirect=on&utm_term=.c6e78e1b8772.

Additionally, from his “Muslim” travel ban,⁹ his demeaning statements about people from “shithole countries,”¹⁰ repeated derogatory characterizations about non-white persons,¹¹ specifically, Latinos, President Trump's racial hostility has continued, unabated.¹²

Adding a citizenship question to the 2020 Census is a recipe for disaster that will exacerbate well-documented undercount challenges for already hard-to-count communities in California, including immigrants (both citizens and non-citizens), their mixed status families, and more broadly, African Americans, Native Americans, Asians, and Latinos.

If not reversed, Secretary Ross' decision will undeniably have far-reaching consequences for California. An undercount of California's hard-to-count communities will result in an inequitable reapportionment of Congressional seats amongst states, with California likely to lose fair representation.¹³ An undercount will also severely impact California's economy by jeopardizing billions of dollars in funding for critical services such as health care, education, and transportation.¹⁴

Secretary Ross' Decision Violates Constitutional Directive to Count Every Person

Inclusion of the citizenship question on the 2020 census violates the constitutional mandate that *all* persons be counted. Specifically, it violates the command set forth in Article I, Section II of the United States Constitution, which states:

...

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other

⁹ Executive Order 13769 of January 27, 2017: Protecting the Nation From Foreign Terrorist Entry Into the United States. Executive Office of the President. 82 FR 8977-8982. February 1, 2017, available at <https://www.whitehouse.gov/presidential-actions/executive-order-protecting-nation-foreign-terrorist-entry-united-states/>.

¹⁰ Eli Watkins and Abby Phillip, “Trump decries immigrants from ‘shithole counties’ coming to US,” Washington Post (Jan. 12, 2018) available at <https://www.cnn.com/2018/01/11/politics/immigrants-shithole-counties-trump/index.html>.

¹¹ James Oliphant and Anthony Esposito, “Trump says ‘animals’ comment refers to criminals, Mexico protests,” Reuters (May 17, 2018) available at <https://www.reuters.com/article/us-usa-immigration-mexico/trump-says-animals-comment-refers-to-criminals-mexico-protests-idUSKCN1I12AT>.

¹² See First Amended Complaint, *La Union Del Pueblo Entero v. Ross*, (U.S. Dist Ct. 2018) Case No. Case 8:18-cv-01570-GJH) at 66-76 (recounting the Trump Administration's actions targeting immigrants).

¹³ “Californians and the 2020 Census,” Public Policy Institute of California, available at <http://www.ppic.org/publication/californians-and-the-2020-census/>.

¹⁴ Andrew D. Reamer, “Counting for Dollars: The Role of the Decennial Census in the Geographic Distribution of Federal Funds,” Brookings Institution: Metropolitan Policy Program (Mar. 2010) available at https://www.brookings.edu/wp-content/uploads/2016/06/0309_census_report.pdf (describing the state-by-state impact of a .1% population increase).

Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.¹⁵

...

Most obvious in this constitutional mandate is the absence of any limits on the census enumeration based on citizenship.¹⁶ Indeed, Secretary Ross can point to no reasonable justification for inclusion of the question in the 2020 Census.

Secretary Ross' Justification for Inclusion of the Citizenship Question Misled the American People

Commerce Secretary Ross' explanation on March 26, 2018,¹⁷ that inclusion of a citizenship question was required because this "data is critical to the Department's enforcement of Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting," has since been shown to be inaccurate and a cynically contrived attempt to deceive Congress and the American people.

First, no deference should be given to the DOJ's claim that citizenship data derived from the decennial census is necessary for a "reliable calculation" of citizens in enforcing Section 2 of the Voting Rights Act. The DOJ acknowledges that the American Community Survey questionnaire already includes a citizenship question and reports data at a ninety percent confidence level. Voting rights advocates have strenuously disagreed with the DOJ's claims, and have conversely claimed that the inaccurate data acquired as result of inclusion of the citizenship question will be "horrible for civil rights enforcement."¹⁸ Furthermore, as highlighted by the Lawyers Committee for Civil Rights Under the Law, in its June 8, 2018 testimony to Congress, the administration's hostility to the Voting Rights Act, invalidates the DOJ's claim that additional data is needed to enforce it.¹⁹

¹⁵ US CONST., art I, sec. 2.

¹⁶ Since the adoption of this provision, of course, the odious nature of counting enslaved persons as three-fifths a person, has been eliminated.

¹⁷ Letter from Secretary Wilbur Ross to Karen Dunn Kelley, "Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire," (March 26, 2018) (available at https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf).

¹⁸ Salvador Rizzo, "Fact-checking claims about Trump's citizenship question in the census," *Washington Post* (March 29, 2018) (available at https://www.washingtonpost.com/news/fact-checker/wp/2018/03/29/fact-checking-claims-about-trumps-citizenship-question-in-census/?utm_term=.7d7b52f40b7f) (quoting Brennan Center's Democracy Program Director Wendy R. Weiser).

¹⁹ Kristen Clarke, "Testimony to U.S. House of Representatives Judiciary Committee Subcommittee on the Constitution and Civil Justice Hearing on "Questions Regarding the U.S. Census," (Jun. 8, 2018) available at <https://lawyerscommittee.org/wp-content/uploads/2018/06/LCCRUL-Testimony-June-8-Census-Questions-Hearing.pdf>.

Second, in response disclosures required by recent litigation, it has been confirmed that the request for a citizenship question did not originate with the Department of Justice, as claimed by Secretary Ross. In fact, documents point to the fact that soon after Trump assumed office, Secretary Ross lamented why no one had moved on his request for a citizenship question to be included on the Census. As a result of Ross' concerns, Commerce Department's Earl Comstock stated, "We need to work with Justice to get them to request that citizenship be added back as a census question, and we have the court cases to illustrate that DoJ has a legitimate need for the question to be included."²⁰ Other documents highlight the direct involvement of Trump Administration advisors Kris Kobach and Steve Bannon.

The addition of such a last-minute, monumental, eleventh hour change to the 2020 Census questionnaire clearly threatens an accurate census count. Inclusion of a citizenship question has diverted the Bureau from following its own policy, which carefully tests proposed modifications before applying them to any decennial census questionnaire.

Secretary Ross must reverse his decision. Everyone in America must count. Our Constitution demands – and this Administration must respect – that the poor, the elderly, people of color, and immigrants be treated equally under the law.

Thank you for your careful consideration of this request to ensure that everyone is counted in the 2020 Census.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Padilla", written over the printed name.

ALEX PADILLA

Secretary of State

²⁰ Tara Bahrapour, "Wilbur Ross actively pushed to add citizenship question to 2020 Census, documents show," Washington Post (July 24, 2018) available at https://www.washingtonpost.com/local/social-issues/wilbur-ross-actively-pushed-to-add-citizenship-question-to-2020-census-documents-show/2018/07/24/5601b3b6-8f65-11e8-bcd5-9d911c784c38_story.html?noredirect=on&utm_term=.d6748c4a7fa3.