



August 6, 2018

Ms. Jennifer Jessup
Departmental Paperwork Clearance Officer
Department of Commerce
Room 6616
14th and Constitution Ave, NW
Washington, DC 20230

Submitted electronically through www.regulations.gov

Re: Comments on Proposed Information Collection on 2020 Census,
Docket ID: USBC-2018-0005

Dear Ms. Jessup:

The American Civil Liberties Union (“ACLU”) writes to offer comments on the 2020 Census proposed information collection as detailed in the 2020 Census Federal Register Notice published at 83 FR 26643 (June 8, 2018). We strongly urge the Department of Commerce to remove the citizenship question from the 2020 Decennial Census form, as it will undermine the quality and accuracy of the census.

For nearly 100 years, the ACLU has been our nation’s guardian of liberty, working in courts, legislatures, and communities to defend and preserve the individual rights and liberties that the Constitution and the laws of the United States guarantee to everyone in this country. With more than three million members, activists, and supporters, the ACLU is a nationwide organization that fights in all 50 states, Puerto Rico, and Washington, D.C. for the principle that every individual’s rights must be protected equally under the law, regardless of race, religion, gender, sexual orientation, gender identity or expression, disability, national origin, or record of arrest or conviction. The ACLU strongly supports a full, fair and accurate census.

The Constitution requires that the Decennial Census count every person in the United States, regardless of their citizenship status.¹ Not only is an accurate census a constitutional mandate, it is integral to our democracy and essential to the basic functions of our society. Decennial Census derived data

¹ Ceridwen Cherry, *Census Question Illegally Discriminates Against Immigrants*, ACLU, (June 6, 2018, 10:00 AM), available at <https://www.aclu.org/blog/immigrants-rights/census-citizenship-question-illegally-discriminates-against-immigrants>; U.S. Const. art. I, §2, cl. 3.

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are used to apportion congressional and state legislative seats and provide the basis for distributing federal tax money to state and local governments. In addition, Decennial Census data guide important community decisions affecting schools, housing, health care services, and business investments.²

The addition of a citizenship question—which will involve a door-to-door government inquiry into the citizenship status of every member of every household in the nation—will sow fear among immigrant communities of color and ultimately suppress census participation. Before this decision was made, Census Bureau personnel had issued specific warnings that Spanish-speakers, Arab-speakers, and Chinese-speakers, among others, were already expressing unprecedented levels of concern about participating in the census. Lower response rates will be especially catastrophic for communities and states with large immigrant populations.³

The Census Bureau's own research shows that including a citizenship question will undermine the quality and accuracy of the Decennial Census and create the risk of a significant undercount, especially among hard to reach population groups that are already fearful of answering government surveys.⁴ And the Census Bureau's own Chief Scientist warned that inclusion of a citizenship question would lower the response rate, increasing the follow up cost and resulting in a less accurate census.⁵ Five former directors of the Census Bureau, serving in both Republican and Democratic administrations, have also opposed the decision to include a citizenship question.⁶

There is simply no need to jeopardize the accuracy of the Decennial Census with the addition of a citizenship question. The Decennial Census has not included a citizenship question for over 70 years. The Voting Rights Act has been successfully enforced by the government and private parties—including the ACLU—for over 50 years and during that time the Justice Department has never had access to individual level citizenship data.⁷ In cases where citizenship information is necessary, the data provided by the American Community Survey is sufficient.⁸ In fact, John Gore, the acting assistant attorney general of the Department of Justice's Civil Rights Division who reportedly drafted the letter to the Census Bureau requesting the addition of a citizenship

² *Questions Regarding the U.S. Census*, 115th Cong. (June 8, 2018, timestamp 37:56-38:11), available at <https://judiciary.house.gov/hearing/questions-regarding-the-u-s-census/>.

³ *Supra* Cherry.

⁴ *NYIC Slams Trump Admin for Lying About Citizenship Question*, N.Y. Immigr. Coalition, (July 24, 2018), available at <https://www.nyic.org/2018/07/nyic-slams-trump-admin-lying-citizenship-question/>.

⁵ Pema Levy, *New Documents Show the Census Bureau Ignored Its Own Experts When It Added a Citizenship Question*, Mother Jones, (July 24, 2018, 5:12 PM), available at <https://www.motherjones.com/politics/2018/07/new-documents-show-the-census-bureau-ignored-its-own-experts-when-it-added-a-citizenship-question/>.

⁶ Ari Berman, *Trump Administration Creates Census Crisis With Move to Suppress Immigrant Responses*, Mother Jones, (Mar. 27, 2018, 8:55 AM), available at <https://www.motherjones.com/politics/2018/03/trump-administration-creates-census-crisis-with-move-to-suppress-immigrant-responses/>.

⁷ *Supra* Cherry.

⁸ Vanita Gupita, *The Bitter Lie Behind the Census Bureau's Citizenship Question*, Wash. Post, Mar. 29, 2018, available at https://www.washingtonpost.com/opinions/the-bitter-lie-behind-the-census-citizenship-question/2018/03/29/f2991020-32cc-11e8-8bdd-cdb33a5eef83_story.html?utm_term=.221fb1c4512b.

question to the 2020 survey, was unable to identify a single Voting Rights Act case that required the use of census citizenship data.⁹

Further, the Department of Justice under President Donald Trump has shifted away from its historic mission of protecting voters to paving the way for states to adopt restrictive voting laws and practices.¹⁰ Instead of being necessary to enforce the Voting Rights Act, the inclusion of a citizenship question is an obvious attempt to scare undocumented immigrants into avoiding the census. Fears that the information will be used to target immigrant communities are understandable given the current political climate.

Asking about citizenship status in a climate of fear and mistrust will depress response rates, cost additional taxpayer money, and thwart an accurate, inclusive enumeration. For the reasons discussed above, the ACLU strongly opposes asking about citizenship status in the 2020 Census and urges the Department of Commerce to remove the proposed citizenship question from the data collection forms. If you have any questions, please contact Jennifer Bellamy at jbellamy@aclu.org.

Sincerely,



Faiz Shakir
National Political Director
National Political Advocacy Department



Jennifer Bellamy
Senior Legislative Counsel
Washington Legislative Office

⁹ *Progress Report on the 2020 Census, Hearing Before the U.S. House of Representatives Comm. on Oversight & Gov't Reform*, 115th Cong. (May 18, 2018, timestamp 1:40:50–1:42:42), available at <https://oversight.house.gov/hearing/progress-on-the-2020-census-continued/>.

¹⁰ *Supra* Cherry.