



UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 Pennsylvania Avenue, NW • Suite 1150 • Washington, DC 20425 www.usccr.gov

April 20, 2018

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

Re.: 2020 Census Questionnaire

Dear Secretary Ross:

The undersigned members of the United States Commission on Civil Rights write to express our deep civil rights concern with your recent decision to add a citizenship question to the 2020 Census Questionnaire,¹ in response to a request from the Department of Justice,² and urge you to reconsider this decision.

As an independent, bipartisan federal agency charged with advising the President and Congress on civil rights matters, the Commission has long evaluated the U.S. Census and its accuracy.³ Critical enforcement of our nation's civil rights laws depends in part on a true and fair count of all Americans, not a process that is jeopardized by a hasty decision to include a question that could have far-reaching ramifications for the health of our country. Our country relies on the Census in determining essential questions of our democracy, such as how many seats a state has in the U.S. House of Representatives. Even in years past without the introduction of an untested question, the Census has undercounted communities of color.⁴

¹ Memorandum from Secretary Wilbur Ross, U.S. Department of Commerce, to Karen Dunn Kelley, Under Secretary for Economic Affairs, Re: Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire, dated Mar. 26, 2018, https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf.

² Letter from Arthur E. Gary, General Counsel, Justice Management Division, Department of Justice to Dr. Ron Jarmin, Performing the Non-Exclusive Functions and Duties of the Director, U.S. Census Bureau, dated Dec. 12, 2017, <https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html>.

³ See, e.g., U.S. Commission on Civil Rights, Counting the Forgotten: The 1970 Census Count of Persons of Spanish Speaking Background in the United States (Apr. 1974), <https://www.law.umaryland.edu/marshall/usccr/documents/cr12sp22970.pdf>; U.S. Commission on Civil Rights, Racial Categorization in the 2010 Census (Mar. 2009), http://www.usccr.gov/pubs/Racial_Categorization.pdf.

⁴ U.S. Census Bureau, Census Bureau Releases Estimates of Undercount and Overcount in the 2010 Census, May 22, 2012, https://www.census.gov/newsroom/releases/archives/2010_census/cb12-95.html.

For these reasons, the Commission is particularly disturbed by your decision to include a citizenship question in the upcoming decennial Census questionnaire. In other questionnaires, the Census Bureau has inquired about citizenship status, including the “long form” questionnaire and the American Community Survey in more recent years, but it has been decades – since 1950 – that it was included in the decennial questionnaire as you now propose. The decennial Census questionnaire is the one survey that is sent to all American households, and the one survey that specifically fulfills the Constitutional directive to conduct an “actual enumeration” of all persons in the United States.⁵ The need for an accurate count has typically led the Bureau to do extensive testing and preparation before making any changes to this decennial questionnaire, including changes to instructions, question order, and certainly the introduction of a wholly separate question. In 2017, the U.S. Census Bureau conducted studies in response to the “observation of increased rates of unusual respondent behaviors” during test surveys regarding concerns about confidentiality and data access relating to immigration.⁶ The findings “point to an unprecedented ground swell in confidentiality and data sharing concerns, particularly among immigrants or those who live with immigrants” that could have an impact on participation and data quality for the 2020 Census.⁷ The U.S. Department of Commerce dismissed these concerns by stating “the Census Bureau’s analysis did not provide definitive, empirical support for that belief.”⁸ But, as your analysis also pointed out, neither does there exist definitive, empirical support for the belief that there will not be a negative response to the inclusion of a citizenship question. Moreover, there is an all- too-real potential for misuse of Census information, with a historically – and painfully – valid basis for concern with participating in a Census that includes such a question.⁹

⁵ U.S. Const. art. I, § 2.

⁶ Mikelyn Meyers, U.S. Census Bureau, Economics and Statistics Administration, Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census, Nov. 20, 2017, <https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf>, at 3.

⁷ *Id.* at 15.

⁸ Memorandum from Secretary Wilbur Ross, *supra* note 1, at 4.

⁹ Lori Aratani, Secret use of census info helped send Japanese Americans to internment camps in WWII, Washington Post, Apr. 6, 2018, https://www.washingtonpost.com/news/retropolis/wp/2018/04/03/secret-use-of-census-info-helped-send-japanese-americans-to-internment-camps-in-wwii/?utm_term=.28a845c6013a.

In the face of the studies by the Census Bureau raising this concern, as well as the concerns raised by Members of Congress,¹⁰ mayors¹¹ and state attorneys general¹² from around the country, and the Census Bureau's own advisory committees,¹³ we find it alarming that you did not obtain more conclusive information about the potential for damage to the accuracy of this critical survey of Americans before prematurely choosing to include an untested citizenship question. A group of former Directors of the Census Bureau from both Republican and Democratic administrations noted that it "is highly risky to ask untested questions," pointing to the "great deal of evidence that even small changes in survey question order, working, and instructions can have significant, and often unexpected, consequences for the rate, quality, and truthfulness of response."¹⁴ You yourself noted in testimony to the House Committee on Oversight and Government Reform late last year that adding untested questions could reduce response rates,¹⁵ a fact that in and of itself should counsel against this decision, let alone factoring in the additional concerns raised by a significant number of stakeholders and affected communities.

Thank you for your consideration and we look forward to your response.

Very truly yours,

¹⁰ See, e.g., Letter from Darren Soto, Congressional Hispanic Caucus and Voting Rights Chair and Michelle Lujan Grisham, Congressional Hispanic Caucus Chair, et al. to Secretary Wilbur Ross, dated Jan. 16, 2018, https://soto.house.gov/sites/soto.house.gov/files/documents/1%2016%2018%20CHC%20Letter_Census%20Citizenship%20Question.pdf.

¹¹ The United States Conference of Mayors, Nation's Mayors to Secretary Ross: Don't Politicize Census. Remove the Citizenship Question, Mar. 27, 2018, <https://www.usmayors.org/2018/03/27/nations-mayors-to-secretary-ross-dont-politicize-census-remove-the-citizenship-question/>.

¹² Letter from Eric T. Schneiderman, Attorney General of the State of New York, et al., to Secretary Wilbur Ross, dated Feb. 12, 2018, https://www.scribd.com/document/371446470/Multi-State-Attorney-General-Letter-Re-2020-Census#from_embed.

¹³ Chase Gunter, Census advisers blast citizenship question, FCW, Mar. 29, 2018, <https://fcw.com/articles/2018/03/29/census-advisers-blast-citizen-question.aspx>.

¹⁴ Letter from Vincent P. Barabba et al. to Secretary Wilbur Ross, dated Jan. 26, 2018, https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf.

¹⁵ *Id.* at 1.



Catherine E. Lhamon, Chair



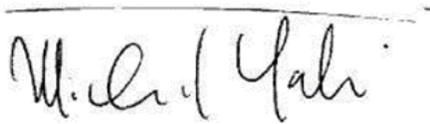
Patricia Timmons-Goodson, Vice-Chair



Debo Adegbile, Commissioner



David Kladney, Commissioner



Michael Yaki, Commissioner

CC:

Dr. Ron Jarmin
Performing the Nonexclusive Functions and Duties of the
Director for the U.S. Census Bureau
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

Chair Trey Gowdy
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Ranking Member Elijah Cummings
House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, DC 20515

Arthur E. Gary
General Counsel, Justice Management Division
U.S. Department of Justice
Justice Management Division
950 Pennsylvania Avenue, NW
Room 1111
Washington, DC 20530