

Congress of the United States
House of Representatives
Washington, D.C. 20515

October 30, 2026

Mr. George M. Cook
Deputy Under Secretary, Performing the Non-Exclusive Functions and Duties of the Director
U.S. Census Bureau
4600 Silver Hill Road
Washington, DC 20233

Dear Mr. Cook:

We write to express our opposition to the Notice of Proposed Rulemaking (NPRM) titled **Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions**.¹ The Trump Administration's proposed rule would violate the Constitution's 14th Amendment that congressional representation be apportioned based on the "whole number of persons" in each state, undermine enforcement of the Voting Rights Act and other crucial federal civil rights laws, and erase critical data on race, ethnicity, and sexual orientation needed to identify and combat discrimination. These changes would deny communities an accurate accounting of who they are and whether they are receiving equal representation, equal protection, and equal access to federal programs and resources. We demand that you immediately withdraw this unconstitutional and harmful rule.

Data collected during the decennial census is the sole basis for drawing congressional district boundaries and necessary in determining how more than \$2.24 trillion is allocated by 371 federal assistance programs for Medicare and Medicaid funds, providing breakfast and lunch to children, building roads and highways, rebuilding communities affected by natural disasters, keeping rural hospitals operational, providing services for individuals with disabilities, and more.² Distorting the U.S. population count in the decennial census will warp our system of proportional representation and make it more difficult for federal programs to reach the people they are meant to serve.

¹ U.S. Census Bureau, *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions*, 91 Fed. Reg. 57524 (Sept. 10, 2026) (proposed rule).

² Project on Government Oversight, *Census Matters: Why an Accurate Census Count is Essential to Funding Our Communities* (Oct. 28, 2025) (online at www.pogo.org/reports/census-matters-why-an-accurate-count-is-essential-to-funding-our-communities).

I. Proposed Residence Criteria

The Trump Administration proposes that “usual residence” for purpose of apportionment would include citizens and Lawful Permanent Residents (LPR), but all other people living in the United States would be excluded from apportionment. This means that refugees and asylees awaiting permanent status, Deferred Action for Childhood Arrivals (DACA) recipients or Dreamers who were brought to America as children, and others would be unlawfully excluded from apportionment.

The Proposed Residence Criteria is an Unconstitutional Attempt to Exclude Noncitizens from Apportionment

“Usual residence” has been long defined as the place where a person lives or sleeps all or most of the time.³ It is not reflective of a person’s voting residence, their legal residence, or citizenship status.⁴ Yet the Trump Administration attempts to redefine “usual residence” to require “a sufficient tie and allegiance to the United States” and/or as being “tied to allegiance, durable permission from the sovereign to settle within the United States, and establishment of domicile within the United States.”⁵ To facilitate apportionment based on this narrower and ahistorical definition of “usual residence,” the Trump Administration contemplates whether to include on the decennial census a question about each person’s immigration status. This appears to be for the purpose of excluding certain non-citizens living in the United States from apportionment, such as asylees, non-LPR refugees, and other immigration parolees.

Excluding these residents from apportionment would cut against the clear text of the U.S. Constitution, which requires that all persons are counted for purposes of apportionment. Section 2 of the 14th Amendment to the Constitution states that congressional apportionment is determined by “counting the whole number of persons in each state.”⁶ The term “whole number of persons” is broad enough to include all individuals, regardless of citizenship status. The Constitution thus requires that the entire population be included in the apportionment calculation.

Indeed, noncitizens have never been excluded from apportionment. The Founders clearly stated that the only individuals exempt from apportionment were “Indians not taxed.”⁷ Enslaved people were not citizens nor LPRs. Women and children were included in apportionment despite being ineligible to vote. As the District Court for the District of Columbia has made clear, “while

³ See Congressional Research Service, *The 2010 Decennial Census: Background and Issues* (Dec. 20, 2013) (R40551) (online at <https://crs.gov/Reports/R40551#fn3>).

⁴ U.S. Census Bureau, *U.S. Census Bureau Finalizes 2020 Census Residence Criteria and Situations* (Feb. 7, 2018) (online at www.census.gov/newsroom/press-releases/2018/residence-criteria.html).

⁵ U.S. Census Bureau, *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions*, 91 Fed. Reg. 57524 (Sept. 10, 2026) (proposed rule).

⁶ U.S. Const. amend. XIV § 2.

⁷ U.S. Const. art. I § 2.

illegal aliens were not a component of the population at the time the Constitution was adopted, they are clearly ‘persons’” for purposes of apportionment.⁸

This is important because, as the Supreme Court has stated, “[Congressional] representatives serve all residents, not just those eligible to vote.”⁹ In the words of Representative James Blaine of Maine during ratification of the 14th Amendment:

As an abstract proposition, no one will deny that population is the true basis of representation; for women, children, and other non-voting classes may have as vital an interest in the legislation of the country as those who actually deposit the ballot.¹⁰

The Proposed Residence Criteria is an Illegal Overreach of Executive Power

In addition to being unconstitutional, changing the definition of “usual residence” to exclude certain residents of a state from apportionment calculations would violate the clear will of Congress. Following each decennial census, the President is required by law to “transmit to the Congress a statement showing the whole number of persons in each State, excluding Indians not taxed” as well as the number of representatives allocated to each state.¹¹ This statute does not distinguish between “persons” based on citizenship, immigration status, or any other criteria. The reference to “Indians not taxed” makes clear that Congress could have exempted other groups from the decennial Census and subsequent congressional apportionment had it meant to do so.

Congress has had ample opportunity to indicate that only certain foreign-born individuals should be considered in apportionment, and it has never done so. The Naturalization Acts of 1790 and 1795 and the Alien Acts of 1798 introduced the term “alien,” or noncitizen, into federal law.¹² Congress later passed the 1882 Chinese Exclusion Act and the Immigration Act of 1924, both of which demonstrated Congress’s interest in regulating immigration and citizenship.¹³ At no point did Congress make a corresponding statutory change to exclude noncitizens and non-LPRs from congressional apportionment, nor did a single decennial census exclude these individuals from apportionment.

⁸ *Federation for Am. Imm. Reform v. Klutznick*, 486 F. Supp. 564 (D.D.C. 1980).

⁹ *Id.*

¹⁰ Congressional Globe, 39th Cong., 1st Sess., at 141 (Jan. 29, 1866) (online at www.congress.gov/congressional-globe/page-headings/39th-congress/n-a/49629).

¹¹ 2 U.S.C. § 2a.

¹² An Act to establish an uniform Rule of Naturalization, ch. 3, 1 Stat. 103 (1790); An act to establish an uniform rule of Naturalization; and to repeal the act heretofore passed on that subject, ch. 20, 1 Stat. 414 (1795); An Act Concerning Aliens, ch. 58, 1 Stat. 570 (1798); An Act respecting alien enemies, ch. 66, 1 Stat. 577 (1798).

¹³ See Chinese Exclusion Act, ch. 126, 22 Stat. 58 (1882); Immigration Act of 1924, Pub. L. No. 68-139, 43 Stat. 153. See also Labor Appropriation Act of 1924, ch. 204, 43 Stat. 205.

The Proposed Changes to Include Immigration Status on the Decennial Census Would Introduce Inaccuracies to Data Used for Enumeration

A significant volume of research indicates that including a question on the decennial census implicitly or explicitly asking about immigration status would depress responses. A 2018 memo from the Chief Scientist and Associate Director for Research and Methodology at the Bureau concluded that the addition of a citizenship question would harm the census count and cause “major potential quality and cost disruptions.”¹⁴ A federal district court similarly found that including a citizenship question in the 2020 census would reduce response rates.¹⁵ This conclusion was supported by former Bureau directors in a brief submitted to the Supreme Court stating that including a citizenship question on the decennial census would overburden respondents and reduce response rates.¹⁶

Including a legal status or citizenship question makes it likely that immigrant households and mixed-status families would be further undercounted, as many individuals may avoid participating in the census altogether.¹⁷ The potential for an undercount if such a question were added to the decennial census can clearly be seen by the impact that the mere idea of including a citizenship question has already had on the census. For example, Hispanic individuals were undercounted by approximately 1.5% on the 2010 decennial census. After the first Trump Administration attempted to add a citizenship question to the 2020 census, the Hispanic undercount more than tripled to nearly 5%, despite the fact that no citizenship question was ultimately included in the 2020 census, because distrust of government confidentiality guarantees runs high in vulnerable populations. And such a question is unnecessary, as the Bureau already collects data about legal status and the foreign-born population living in the United States through the American Community Survey (ACS).¹⁸ As we witness the trend of young children, Black individuals, foreign born individuals, individuals living in mixed-status households, American Indians and Alaska Natives living on reservations, and Hispanic or Latino populations already undercounted on the decennial census, the Bureau should be working to rectify these undercounts, not make the issue worse.¹⁹

¹⁴ Memorandum from Chief Scientist and Associate Director for Research and Methodology John M. Abowd, U.S. Census Bureau, to Secretary of Commerce Wilbur L. Ross, Jr. (Jan. 19, 2018) (online at <https://perma.cc/C45S-LF8B>).

¹⁵ *State of New York, et al., v. United States Department of Commerce, et al.*, S.D.N.Y., Document No. 574 (No. 1:18 CV 02921) (Jan. 15, 2019).

¹⁶ Brief of Former Census Bureau Directors as Amici Curiae in Support of Respondents (Apr. 23, 2019) *United States Department of Commerce, et. al. v. State of New York, et al.* (No. 18-966) (stating that the addition of a citizenship question “would inflict long-term damage from which the census would not soon recover”).

¹⁷ See Brookings, *America Wins as Trump Abandons the Citizenship Question from the 2020 Census* (July 12, 2019) (online at www.brookings.edu/articles/america-wins-trump-abandons-the-citizenship-question-from-2020-census/); Brennan Center for Justice, *Why the Census Asking About Citizenship is Such a Problem* (Mar. 27, 2018) (online at www.brennancenter.org/our-work/analysis-opinion/why-census-asking-about-citizenship-such-a-problem).

¹⁸ U.S. Census Bureau, *The American Community Survey 2020 Questionnaire* (2020) (online at www2.census.gov/programs-surveys/acs/methodology/questionnaires/2020/quest20.pdf).

An accurate population count through the decennial census requires public cooperation. By discouraging the participation of individuals belonging to certain demographics, the inclusion of a citizenship question on the decennial census would decrease public cooperation with the census. This would harm the statistical integrity of the data collected during the census, which in turn would create a negative reinforcing cycle of distorted data, public mistrust in that data, and the continued erosion of trust in the government as whole.²⁰

As an alternative to including a citizenship question on the decennial census form, the Bureau references in the NPRM the use of administrative records to verify legal status for purposes of calculating apportionment. However, these administrative records would not be robust enough to cover the entire U.S. population, may be outdated or incomplete, and are an inadequate substitute for self-responses and in-field enumeration. For example, the Census Bureau found in a working paper on the Social Security Administration (SSA) NUMIDENT database that applications for Social Security cards cannot capture all naturalizations as they occur, and that passport records do not cover all citizens as many people do not have passports.²¹ The Bureau also found that there were very large discrepancies between self-reported information collected on the ACS and citizenship information found in the NUMIDENT.²² Moreover, SSA did not begin maintaining citizenship data until 1981, so citizenship information is not available in NUMIDENT for individuals older than 49.²³

¹⁹ Government Accountability Office, *2020 Census: Coverage Errors and Challenges Inform 2030 Plans* (Nov. 21, 2024) (GAO-25-107160) (online at www.gao.gov/products/gao-25-107160); *The 2020 Census Had Big Undercounts of Black People, Latinos and Native Americans*, NPR (Mar. 11, 2022) (online at www.npr.org/2022/03/10/1083732104/2020-census-accuracy-undercount-overcount-data-quality); U.S. Census Bureau, *Census Bureau Releases Estimates of Undercount and Overcount in the 2020 Census* (Mar. 10, 2022) (online at www.census.gov/newsroom/press-releases/2022/2020-census-estimates-of-undercount-and-overcount.html).

²⁰ See Brookings, *America Wins as Trump Abandons the Citizenship Question from the 2020 Census* (July 12, 2019) (online at www.brookings.edu/articles/america-wins-trump-abandons-the-citizenship-question-from-2020-census/); Brennan Center for Justice, *Why the Census Asking About Citizenship is Such A Problem* (Mar. 27, 2018) (online at www.brennancenter.org/our-work/analysis-opinion/why-census-asking-about-citizenship-such-problem); U.S. Census Bureau, National Advisory Committee on Racial, Ethnic, and Other Populations, *Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census* (Nov. 2, 2017) (online at www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf); Memorandum from Chief Scientist and Associate Director for Research and Methodology John M. Abowd, U.S. Census Bureau, to Secretary of Commerce Wilbur L. Ross, Jr. (Jan. 19, 2018) (online at <https://perma.cc/C45S-LF8B>).

²¹ U.S. Census Bureau, *Determination of the 2020 U.S. Citizen Voting Age Population (CVAP) Using Administrative Records and Statistical Methodology* at p. 9, 12 (Oct. 30, 2020) (CES-20-33) (online at www2.census.gov/ces/wp/2020/CES-WP-20-33.pdf).

²² Letter from Associate General Counsel for General Law Division 1, Nancy Morales Gonzalez, Social Security Administration, to Litigation Director & Senior Counsel Jon Sherman, Fair Elections Center (July 13, 2023) (online at <https://perma.cc/KS2N-U2US>).

²³ Center on Budget and Policy Priorities, *Trump Administration's Legally Dubious Misuse of Social Security Data Risks Disenfranchising Eligible Voters* (Dec. 9, 2025) (online at www.cbpp.org/blog/trump-administrations-legally-dubious-misuse-of-social-security-data-risks-disenfranchising).

Similarly, administrative records do not accurately contain data on residence for all people in the United States.²⁴ A 2020 report by the Census Bureau found that 9% of voting age Americans lacked administrative records that could be used to verify their citizenship status. This is particularly true for individuals in hard-to-reach communities.²⁵ Although the Bureau suggests in its NPRM that a person's usual residence should match their W-2 forms or tax return, officials within the Department of the Treasury have acknowledged that "no particular tax record is controlling" in determining residence.²⁶ It is also unclear how the Bureau would determine a person's usual residence in instances in which a self-reported address does not match a person's W-2 or other tax form—for example, if someone uses a P.O. box as their tax address.²⁷ Using administrative records like NUMIDENT or tax forms as a substitute for self-response or in-field enumeration on the decennial census is likely to create substantial errors in the collected data.

Among a list of various agency records identified in the NPRM as potential sources of information for determining individuals' residence, the Bureau references "third-party commercial data" that would be used for a "linkage" effort. While we understand that the Bureau has previously utilized administrative records to inform the decennial census and calculate apportionment, the use of such administrative records to identify individuals' "usual residence" raises numerous concerns. The Bureau provides no detail regarding the sources and types of third-party commercial data that would be used to verify "usual residence." It also provides no resolution or appeals process for individuals to utilize to rectify any errors that arise through the Bureau's linkage or verification activities.

Finally, the Bureau also attempts to create a new "period of enumeration" from January 1, 2030, to April 1, 2030. Title 13 requires that the usual residence should be calculated based on a census date, which has been historically considered to be April 1. The Census Bureau has historically allowed respondents to determine their usual residence by reporting the place where a person resides or sleeps most of the time.²⁸ Using a period of enumeration instead of a single date creates multiple practical problems for respondents. Individuals who have more than one home or migrate for seasonal work will be counted at the location they reside in during that period of enumeration, which may not be the home where they spend most of their time, pay

²⁴ See e.g., United States Postal Service Office of Inspector General, *Strategies for Reducing Undeliverable as Addressed Mail* (May 1, 2015) (MS-MA-15-006) (online at www.uspsoig.gov/sites/default/files/reports/2023-01/ms-ma-15-006.pdf); Treasury Inspector General for Tax Administration, *Additional Actions Are Needed to Further Reduce Undeliverable Mail* (Sept. 11, 2019) (online at <https://perma.cc/5R66-8HSP>).

²⁵ U.S. Census Bureau, *Determination of the 2020 U.S. Citizen Voting Age Population (CVAP) Using Administrative Records and Statistical Methodology Technical Report* (Oct. 2020) (CES-20-33) (online at www.census.gov/library/working-papers/2020/adrm/CES-WP-20-33.html).

²⁶ *Exclusive: Commerce Overruled Treasury Concerns in Push to Narrow Census Count*, Talking Points Memo (Sept. 17, 2026) (online at <https://talkingpointsmemo.com/news/exclusive-commerce-overruled-treasury-concerns-in-push-to-narrow-census-count>).

²⁷ *Id.*

²⁸ See Congressional Research Service, *The 2010 Decennial Census: Background and Issues* (Dec. 20, 2013) (R40551) (online at <https://crs.gov/Reports/R40551#fn3>).

taxes on their primary residence, and vote in federal, state, and local elections.²⁹ In addition, a person who moves during this new period of enumeration may be misreported at their prior address rather than their current residence as of Census Day (April 1).

The Proposed Residence Criteria Could Misallocate Trillions of Dollars in Federal, State, and Local Funding

Any inaccuracies introduced into the decennial census data by the Trump Administration's politically motivated proposal will have serious impacts far beyond congressional apportionment. The federal government uses data collected in the decennial census to allocate more than two trillion dollars in federal funds, including funding for:³⁰

- Building more resilient communities through Community Development Block Grants;
- Feeding children and improving educational outcomes through the National School Lunch Programs, Head Start, the School Breakfast Program, and Career and Technical Education Grants;
- Providing health care through Medicaid and the Children's Health Insurance Program (CHIP) using the Federal Medical Assistance Percentage (FMAP) allotted to states;
- Fixing roads and bridges through Highway Planning and Construction funding;
- Providing affordable energy to families through Low-Income Home Energy Assistance;
- Reducing crime in local communities and combatting domestic violence and abuse through Crime Victim Assistance and Violence Against Women Act grants; and
- Supporting state-level emergency management programs and disaster preparedness through Building Resilient Infrastructure and Communities and Firefighter Assistance grants.³¹

²⁹ For example, a retired couple who spend their time in the south during the winter may feel compelled to be counted at that home rather than their primary residence.

³⁰ See *Kirkpatrick v. Preisler*, 394 U.S. 526, 528 (1969) (the decennial census is considered the "best population data available").

³¹ American Bar Association, *How Census Data Leads to Local Planning and Funding* (online at www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-20/issue-2/how-census-data-leads-to-local-planning-and-funding/) (accessed Oct. 2, 2026); Project on Government Oversight, *Dollars and Demographics: How Census Data Shapes Federal Funding Distribution* (Sept. 11, 2023) (online at www.pogo.org/reports/dollars-and-demographics-how-census-data-shapes-federal-funding-distribution).

By introducing additional inaccuracies into the population data collected during the decennial census, the NPRM will cause communities across the country to lose access to critical funding that keeps Americans safe.

II. Proposed Regulations for Demographic Questions

The NPRM would prevent the Bureau from collecting demographic information on race, ethnicity, and sexual orientation through the decennial census. Understanding demographic data for the entire U.S. population is essential for evaluating the effectiveness of federal programs, identifying disparities, and upholding civil rights protections. The Bureau suggests that this information is too sensitive to be collected as part of the decennial census. But the sensitive nature of this data is not a valid reason to eliminate its collection. Rather, it underscores the importance of the confidentiality requirements already established through Title 13.

Race and Ethnicity Data Are Necessary to Ensure Equal Access to the Law, Federal Programs, and Voting

The Census Bureau is the federal government's largest statistical agency and the nation's leading provider of data about the American people and economy.³² Race and ethnicity data collected by the Bureau are not merely demographic statistics. These data are essential for enforcing civil rights laws, administering federal programs, protecting voting rights, and identifying whether communities are receiving equal treatment under the law.³³ The Trump Administration's suggestion that collecting race and ethnicity data is unnecessary overlooks the practical role that this data play in civil rights enforcement. Treating every person equally under the law underscores the need to measure whether people and communities are, in practice, experiencing discrimination or unequal access.

According to the Bureau, demographic data is used to establish and evaluate guidelines for Federal Equal Opportunity Recruitment Programs—which ensure equal opportunities for federal employees regardless of race, color, religion, sex, or national origin—and to monitor compliance with the Voting Rights Act.³⁴ Racial demographic data is also used to ensure equal employment opportunities under the Civil Rights Act of 1964, allocate funds to school districts for bilingual services under the Bilingual Education Act, and identify segments of the population who may not have access to necessary medical services under the Public Health Service Act.³⁵ If the government were to no longer collect reliable information about the racial and ethnic composition of the population, it would be difficult to determine whether discrimination is

³² U.S. Census Bureau, *U.S. Census Bureau at a Glance* (Oct. 24, 2017) (online at www.census.gov/about/what/census-at-a-glance.html).

³³ U.S. Census Bureau, *Why We Ask Questions About... Race* (online at www.census.gov/acs/www/about/why-we-ask-each-question/race) (accessed Oct. 2, 2026).

³⁴ *Id.*; 5 C.F.R. § 720.101 (1983).

³⁵ *Id.*

occurring, whether federal programs are reaching the populations they are intended to serve, and whether government policies are producing unequal outcomes.

Researchers, policymakers, advocacy organizations, and communities also use race and ethnicity data to examine whether people from different racial and ethnic groups have comparable opportunities in education, employment, voting, housing, health care, and other areas of public life.³⁶ Eliminating the collection of race and ethnicity data as part of the decennial census would create a significant information gap for the public and those working to protect equal rights. Simply put, the government cannot determine whether discrimination or unequal treatment on the basis of race or ethnicity exists if it does not have reliable demographic information about the racial and ethnic makeup of the population. Equal protection requires more than just a statement that everyone is equal under the law. Government agencies, courts, researchers, and communities need reliable data to ensure equal treatment.

In suggesting that demographic information on race and ethnicity should no longer be collected through the decennial census, the Bureau relies on recent case law that it claims raises “substantial doubts about the meaning, significance, and impact of attempting to categorize persons by race and ethnicity,” as well as Executive Order 14151 issued by President Trump in January 2025.³⁷ But neither that Executive Order nor the Supreme Court decisions from 2023-2026 that the Bureau cites to support this proposition invalidated the federal civil rights laws still in full force and effect that rely on the collection of racial demographic data, nor do they supersede the decades of legal precedent interpreting those civil rights laws.

Specifically, the NPRM points to the Supreme Court’s recent decisions in *Allen v. Milligan* and *Louisiana v. Callais* to argue that the Bureau should no longer collect race and ethnicity data on the decennial census.³⁸ The question presented in each of those Supreme Court cases concerned the legality of an individual congressional redistricting plan. The Court did not consider whether race and ethnicity data should be collected as part of the decennial census.

In truth, it is particularly important to collect race and ethnicity data if the concern is protecting voting rights. The Bureau currently organizes Citizen Voting Age Population (CVAP) data by race and ethnicity for voting rights analysis, using data collected as part of the ACS.³⁹ Importantly, the ACS calibrates its demographic estimates using racial data collected on the decennial census.⁴⁰ Without the collection of race and ethnicity data on the decennial census, the

³⁶ U.S. Census Bureau, *Why We Ask Questions About... Race* (online at www.census.gov/acs/www/about/why-we-ask-each-question/race) (accessed Oct. 2, 2026).

³⁷ U.S. Census Bureau, *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions*, 91 Fed. Reg. 57524 (Sept. 10, 2026) (proposed rule).

³⁸ *Id.*

³⁹ U.S. Census Bureau, *Citizen Voting Age Population by Race and Ethnicity* (Jan. 30, 2026) (online at www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html).

⁴⁰ Population Reference Bureau, *Difference Between the ACS and Decennial Census* (online at www.prb.org/resource/differences-between-the-acs-and-decennial-census/) (accessed Oct. 2, 2026).

Bureau cannot produce the demographic data needed to evaluate the racial composition of communities and assess claims involving voting discrimination and voting dilution.⁴¹ The proposed rule would impede voting rights enforcement by making it harder to obtain the statistical data needed to succeed on a claim for relief.⁴²

The Proposed Rule Should Not Restrict Future Data Collection on Sexual Orientation that Could Strengthen the Protection of LGBTQ Individuals Under Federal Law

The NPRM would also prohibit the decennial census from asking about sexual orientation⁴³—despite the fact that the decennial census has never asked an explicit, standalone question on sexual orientation.⁴⁴ As with race and ethnicity data, this prohibition is short-sighted. Reliable demographic data about individuals’ sexual orientation allows the federal government, researchers, policymakers, and communities to identify population trends, measure disparities, evaluate federal programs, and determine whether LGBTQ individuals have equal access to housing, healthcare, and employment.⁴⁵ As such, the government should not foreclose the possibility of including a question about sexual orientation on a future decennial census.

The Supreme Court has recognized that federal civil rights protections against sex discrimination can encompass discrimination based on sexual orientation. For example, in *Bostock v. Clayton County* the Court held that Title VII’s prohibition on workplace discrimination based on sex includes discrimination based on sexual orientation or gender identity.⁴⁶ Other federal laws, like the Violence Against Women Act, as amended, include explicit protections against sexual orientation (and gender identity) discrimination.⁴⁷ The federal government has also previously recognized the need to combat discrimination based on sexual orientation in other areas, including, for example, in federal programs intended to ensure equal access to housing and health care.⁴⁸ Future collection of demographic data on sexual orientation

⁴¹ U.S. Census Bureau, *Citizen Voting Age Population by Race and Ethnicity* (Jan. 30, 2026) (online at www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html).

⁴² To be clear, this is still required even after the decision in *Callais*. See [insert CITATION, argument]

⁴³ U.S. Census Bureau, *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions*, 91 Fed. Reg. 57524 (Sept. 10, 2026) (proposed rule).

⁴⁴ Congressional Research Service, *Proposed Expanded Collection of Statistics on Sexual Orientation and Gender Identity by the Federal Government* (Apr. 2, 2024) (IN12342) (online at www.congress.gov/crs-product/IN12342).

⁴⁵ U.S. Census Bureau, *LGBTQ+ Half Pagets* (online at www2.census.gov/programs-surveys/decennial/2020/partners/outreach-materials/half-pagers/for-lgbtq-audiences-option1.pdf) (accessed Oct. 2, 2026).

⁴⁶ *Bostock v. Clayton County*, 590 U.S. 644 (2020).

⁴⁷ See Pub. L. No. 117-103 (2022).

⁴⁸ See Department of Housing and Urban Development, *News Release: HUD to Enforce Fair Housing Act to Prohibit Discrimination on the Basis of Sexual Orientation and Gender Identity* (Feb. 11, 2021) (online at <https://archives.hud.gov/news/2021/pr21-021.cfm>); Human Rights Campaign, *Legal Protections for LGBTQ+ People Under the New Section 1557 Final Rule* (online at www.hrc.org/resources/legal-protections-for-lgbtq-people).

through the decennial census could provide important information for identifying patterns of discrimination and help ensure that LGBTQ communities are better understood and served by federal programs. Reliable demographic data makes it possible to identify disparities, understand the causes of such disparities, and determine how to address them. The Bureau should retain its ability to consider future sexual orientation questions based on a deliberative process informed by rigorous research and testing, meaningful consultation with federal agencies, and substantive engagement with subject-matter experts and affected communities.

This prohibition also raises concerns about the collection of data of same-sex couples on the decennial census. Although this data collection is distinct from a question on sexual orientation, it has provided important insights into a distinct segment of the LGBTQ population. Other data sources may not capture as comprehensively or consistently across geographies. The Bureau should not restrict the collection or publication of same-sex couple data through the household relationship question, as doing so would undermine the accuracy, quality, and reliability of data on coupled households across the country.

The Census Bureau Can Collect Essential Demographic Data While Protecting Individual Privacy

The NPRM expresses concern that collecting demographic data on markers as sensitive as race, ethnicity, and sexual orientation could allow identification of individuals within published datasets. This concern is not without merit and is the reason that Congress has established strong confidentiality protections for information collected by the Census Bureau. As early as 1879, Congress made census records confidential and imposed penalties for disclosing such information.⁴⁹ In 1954, Congress codified confidentiality requirements in Title 13 of the U.S. Code. Under 13 U.S.C. § 9, information collected as part of the census may only be used for statistical purposes and may not be published in a manner that would identify an individual.⁵⁰

The fact that demographic information is sensitive is not a reason to stop collecting such data. It is a reason to have stringent privacy protections in place. This year, the Census Bureau without external expert or public input issued a Disclosure Avoidance Order (DAO) that eliminated the Census Bureau's use of differential privacy techniques for disclosure of personal information—a statistical method that offers strong confidentiality protections.⁵¹ To be clear, differential privacy is not used in calculating congressional apportionment. But rather than exploring the use of additional confidentiality methods for public access, the Bureau stated that it would revert to using statistical techniques with less privacy protections that produce less usable

under-the-new-section-1557-final-rule) (accessed Oct. 2, 2026).

⁴⁹ U.S. Census Bureau, *The History of Privacy and Confidentiality at the U.S. Census Bureau* (online at www.census.gov/about/history/bureau-history/agency-history-timeline/privacy-confidentiality.html) (accessed Oct. 2, 2026).

⁵⁰ 13 U.S.C. § 9.

⁵¹ U.S. Census Bureau, *Understanding the New Disclosure Avoidance Policy: What It Means for Data, Confidentiality, and You* (Aug. 17, 2026) (online at www.census.gov/newsroom/blogs/director/2026/08/understanding-the-new-disclosure-avoidance-policy.html).

public data, and proposes the elimination of certain data collection altogether.⁵² Rather, the federal government can and should collect information necessary to understand the nation's population while maintaining strict and proven safeguards against the disclosure of individually identifiable information.

III. Conclusion

The Trump Administration's proposal to use citizenship or immigration status to determine congressional apportionment contravenes the clear language of the Constitution and represents an illegal attempt to override the will of Congress. By changing the definition of "usual residence" for purposes of the decennial census, the Bureau will introduce uncertainties that make the data collected less accurate and therefore less useful. The Bureau's proposal to prohibit collecting data on race, ethnicity, and sexual orientation would make it harder to protect civil rights and ensure equal treatment of all individuals. In sum, the proposed rule fails to improve the collection or usage of data in the decennial census and appears instead designed to create and obscure inequities in representation and protection under the law.

As such, we strongly urge you to withdraw the proposed rule.

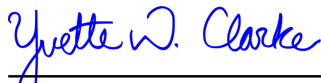
Sincerely,



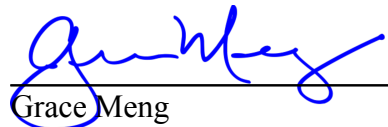
Robert Garcia
Ranking Member
Committee on Oversight and
Government Reform



Adriano Espaillat
Chair
Congressional Hispanic
Caucus



Yvette D. Clarke
Chair
Congressional Black Caucus



Grace Meng
Chair, Congressional Asian
Pacific American Caucus

⁵² *Id.*; U.S. Census Bureau, *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions*, 91 Fed. Reg. 57524 (Sept. 10, 2026) (proposed rule).



Mark Takano
Chair
Congressional Equality
Caucus



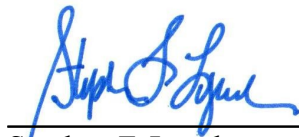
Greg Stanton
Member of Congress



Melanie Stansbury
Member of Congress



Raja Krishnamoorthi
Member of Congress



Stephen F. Lynch
Member of Congress



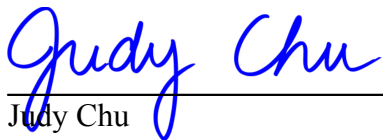
Joyce Beatty
Member of Congress



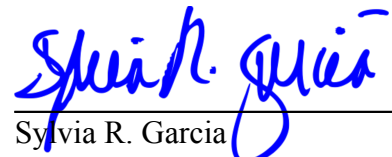
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Member of Congress



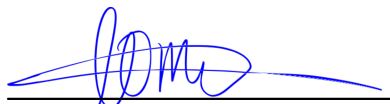
Mark DeSaulnier
Member of Congress



Judy Chu
Member of Congress



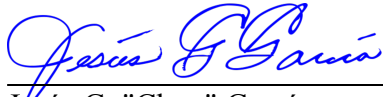
Sylvia R. Garcia
Member of Congress



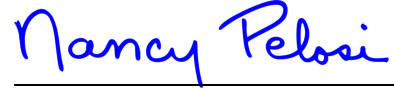
Ilhan Omar
Member of Congress



Yassamin Ansari
Member of Congress



Jesús G. "Chuy" García
Member of Congress



Nancy Pelosi
Member of Congress



Sydney Kamlager Dove
Member of Congress



Dan Goldman
Member of Congress



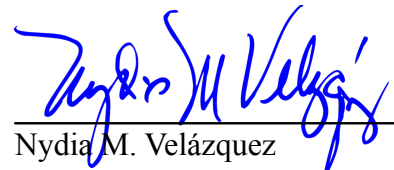
Eleanor Holmes Norton
Member of Congress



Ro Khanna
Member of Congress



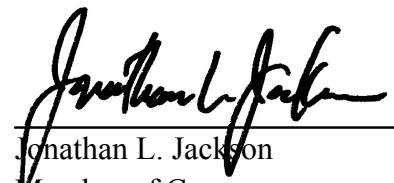
Lateefah Simon
Member of Congress



Nydia M. Velázquez
Member of Congress



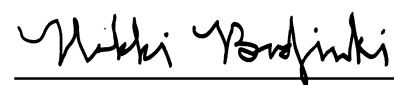
Delia C. Ramirez
Member of Congress



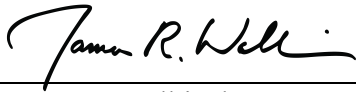
Jonathan L. Jackson
Member of Congress



Maxine Waters
Member of Congress



Nikki Budzinski
Member of Congress



James R. Walkinshaw
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



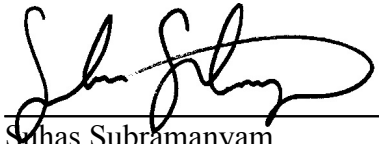
Jasmine Crockett
Member of Congress



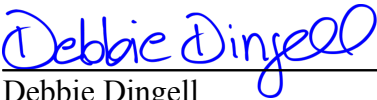
Adam Smith
Member of Congress



André Carson
Member of Congress



Suhas Subramanyam
Member of Congress



Debbie Dingell
Member of Congress



Nellie Pou
Member of Congress



Bonnie Watson Coleman
Member of Congress



Shontel M. Brown
Member of Congress



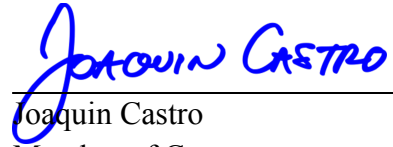
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Member of Congress



Brittany Pettersen
Member of Congress



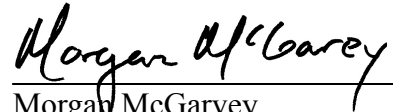
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Member of Congress



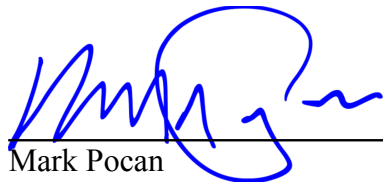
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Member of Congress



Ted W. Lieu
Member of Congress



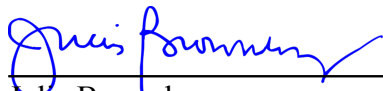
Morgan McGarvey
Member of Congress



Mark Pocan
Member of Congress



Dave Min
Member of Congress



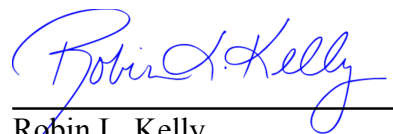
Julia Brownley
Member of Congress



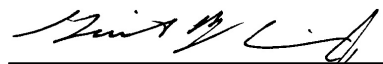
Pablo José Hernández
Member of Congress



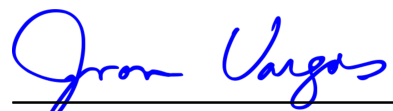
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Member of Congress



Robin L. Kelly
Member of Congress



Gilbert Ray Cisneros, Jr.
Member of Congress



Juan Vargas
Member of Congress



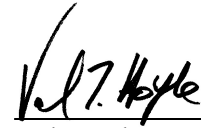
Zoe Lofgren
Member of Congress



Chellie Pingree
Member of Congress



Summer L. Lee
Member of Congress



Val Hoyle
Member of Congress



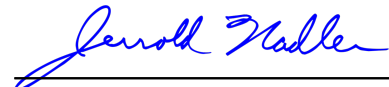
Kristen McDonald Rivet
Member of Congress



Frederica S. Wilson
Member of Congress



Rashida Tlaib
Member of Congress



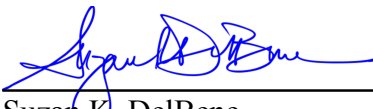
Jerrold Nadler
Member of Congress



Analilia Mejia
Member of Congress



Chris Deluzio
Member of Congress



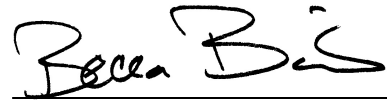
Suzan K. DelBene
Member of Congress



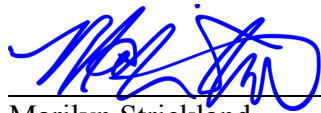
J. Luis Correa
Member of Congress



Veronica Escobar
Member of Congress



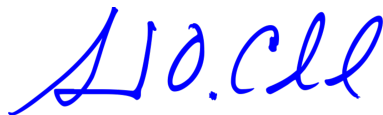
Becca Balint
Member of Congress



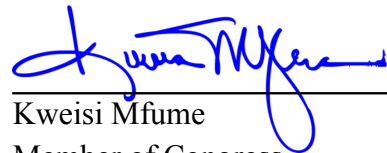
Marilyn Strickland
Member of Congress



Jared Huffman
Member of Congress



Salud Carbajal
Member of Congress



Kweisi Mfume
Member of Congress



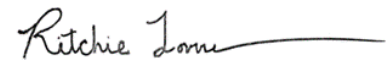
Paul D. Tonko
Member of Congress



Troy A. Carter, Sr.
Member of Congress



Andrea Salinas
Member of Congress



Ritchie Torres
Member of Congress



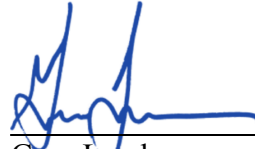
Dina Titus
Member of Congress



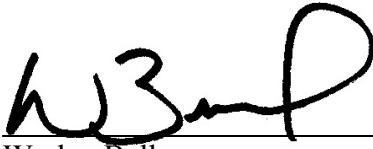
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Member of Congress



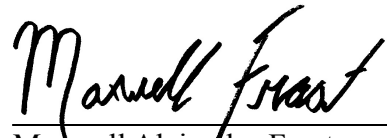
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Member of Congress



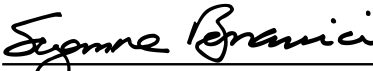
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Member of Congress



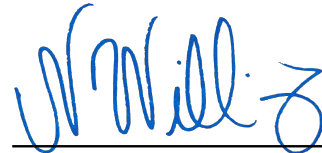
Wesley Bell
Member of Congress



Maxwell Alejandro Frost
Member of Congress



Suzanne Bonamici
Member of Congress



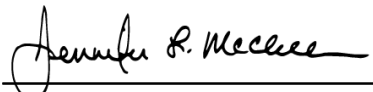
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Member of Congress



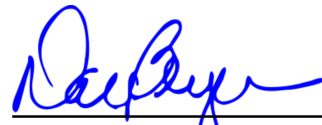
Eugene Simon Vindman
Member of Congress



Timothy M. Kennedy
Member of Congress



Jennifer L. McClellan
Member of Congress



Donald S. Beyer Jr.
Member of Congress



Ayanna Pressley
Member of Congress



Al Green
Member of Congress



Adenita S. Grijalva
Member of Congress



Pramila Jayapal
Member of Congress



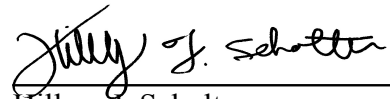
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Member of Congress



Kathy Castor
Member of Congress



Robert C. "Bobby" Scott
Member of Congress



Hillary J. Scholten
Member of Congress



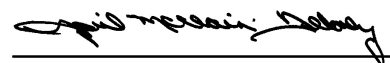
Frank Pallone, Jr.
Member of Congress



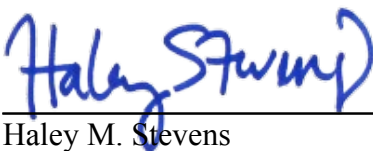
Shri Thanedar
Member of Congress



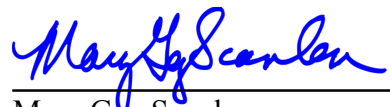
George Latimer
Member of Congress



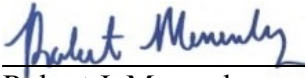
April McClain Delaney
Member of Congress



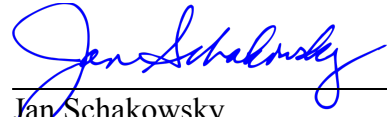
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Member of Congress



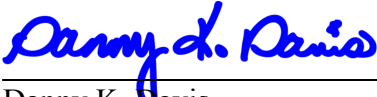
Mary Gay Scanlon
Member of Congress



Robert J. Menendez
Member of Congress



Jan Schakowsky
Member of Congress



Danny K. Davis
Member of Congress



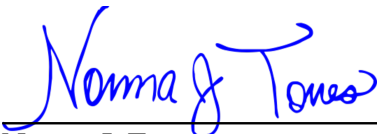
Maxine Dexter, M.D.
Member of Congress



James P. McGovern
Member of Congress



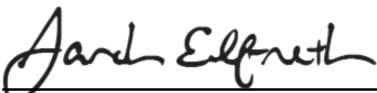
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Member of Congress



Norma J. Torres
Member of Congress



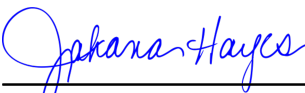
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Member of Congress



Sarah Elfreth
Member of Congress



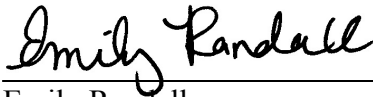
Lizzie Fletcher
Member of Congress



Jahana Hayes
Member of Congress



Dwight Evans
Member of Congress



Emily Randall
Member of Congress



Deborah K. Ross
Member of Congress



Angie Craig
Member of Congress



Betty McCollum
Member of Congress



Patrick Ryan
Member of Congress



Mike Levin
Member of Congress



Kevin Mullin
Member of Congress



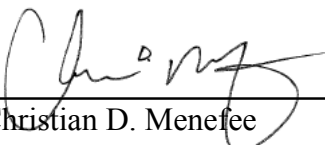
Jamie Raskin
Member of Congress



Mike Quigley
Member of Congress



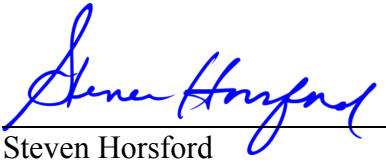
Lauren Underwood
Member of Congress



Christian D. Menefee
Member of Congress



Mike Thompson
Member of Congress



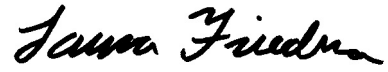
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Member of Congress



Diana DeGette
Member of Congress



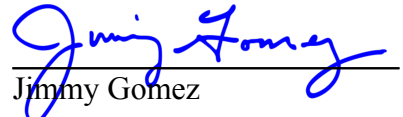
Julie Johnson
Member of Congress



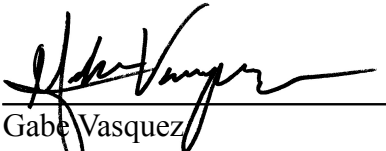
Laura Friedman
Member of Congress



Emanuel Cleaver, II
Member of Congress



Jimmy Gomez
Member of Congress



Gabe Vasquez
Member of Congress



Josh Gottheimer
Member of Congress



Gabe Amo
Member of Congress



Bradley Scott Schneider
Member of Congress



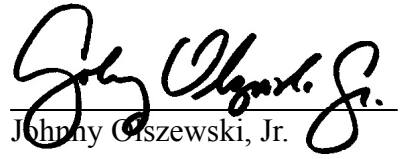
Rick Larsen
Member of Congress



Madeleine Dean
Member of Congress



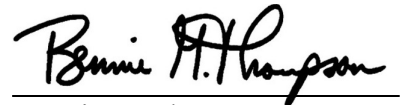
Steve Cohen
Member of Congress



Johnny Ciszewski, Jr.
Member of Congress



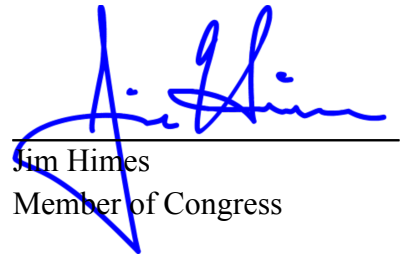
John W. Mannion
Member of Congress



Bennie G. Thompson
Member of Congress



Bill Foster
Member of Congress



Jim Himes
Member of Congress



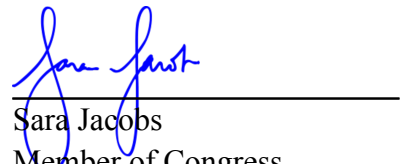
Sarah McBride
Member of Congress



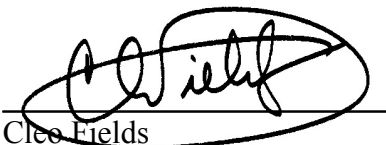
Sam T. Liccardo
Member of Congress



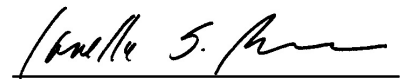
Teresa Leger Fernández
Member of Congress



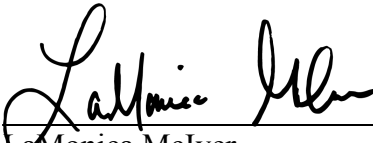
Sara Jacobs
Member of Congress



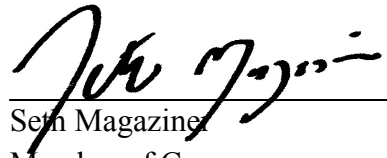
Cleo Fields
Member of Congress



Janelle S. Bynum
Member of Congress



LaMonica McIver
Member of Congress



Seth Magaziner
Member of Congress



Brad Sherman
Member of Congress



Scott H. Peters
Member of Congress



Kelly Morrison
Member of Congress



JM Tokuda
Member of Congress