

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND REFORM

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December 2, 2020

The Honorable Wilbur L. Ross, Jr.  
Secretary  
U.S. Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Dear Secretary Ross:

The Department of Commerce is blocking the production of documents requested last month by the Committee relating to reports that career officials at the Census Bureau have warned the Trump Administration that they will be unable to produce a complete and accurate 2020 Census count prior to late January and possibly into February 2021. Despite the Trump Administration's obstruction, the Committee has now obtained several internal Census Bureau documents from another source that not only confirm these press reports, but indicate that unresolved errors may be more extensive than first reported. I write to urge you to end your obstruction of the Committee's inquiry on this critical issue and produce a full and unredacted set of the documents requested by the Committee. If you refuse, the Committee will have no choice but to issue a subpoena.

**Trump Administration's Refusal to Produce Documents on Census Delays**

The 2020 Census has faced unprecedented challenges, including delays due to the coronavirus pandemic, a potential undercount induced by the President's illegal efforts to exclude undocumented immigrants, and a tightly compressed schedule resulting from the Administration's rush to complete the count before President Trump leaves office despite warnings from career Census Bureau staff that this could lead to serious data errors.

On November 19, 2020, the *New York Times* reported that "Census Bureau officials have concluded that they cannot produce the state population totals required to reallocate seats in the House of Representatives until after President Trump leaves office in January." The report added: "the Census Bureau told the Commerce Department that a growing number of snags in the massive data-processing operation that generates population totals had delayed the completion of population calculations at least until Jan. 26, and perhaps to mid-February."<sup>1</sup>

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<sup>1</sup> *Census Officials Say They Can't Meet Trump's Deadline for Population Count*, New York Times (Nov. 19, 2020) (online at [www.nytimes.com/2020/11/19/us/2020-census-data.html](http://www.nytimes.com/2020/11/19/us/2020-census-data.html)).

After the story became public, the Census Bureau Director, Dr. Steven Dillingham, issued a statement confirming that “anomalies have been discovered” during data processing, but he provided few details.<sup>2</sup>

Since none of these problems had been reported to the Committee, I sent a letter to the Census Bureau on November 19, 2020, seeking documents relating to these anomalies, the predicted delays they would cause, and their potential impact on the accuracy of the Census count. The letter asked for these documents by November 24, 2020, explaining: “The Committee must have reliable and accurate information in order to fulfill our responsibilities under the Constitution to conduct oversight of the 2020 Census.”<sup>3</sup>

No documents have been provided to the Committee in response to this letter. On November 24, 2020—the date the documents were due—Committee staff received a bipartisan telephone briefing from Director Dillingham and other top Census Bureau officials. These officials reported that documents responsive to the Committee’s November 19 request had been submitted to your General Counsel at the Department of Commerce, but had not been cleared for release due to “concerns about ongoing litigation.” When asked whether the Bureau had an expected date by which production might be possible, the officials could not provide one.

The existence of separate litigation is not a valid reason to withhold documents from Congress.<sup>4</sup> The Constitution provides Congress with responsibility to conduct oversight of, and to pass laws relating to, the Census,<sup>5</sup> and the Committee has authority that is separate and independent from any litigation being pursued in civil courts.<sup>6</sup>

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<sup>2</sup> U.S. Census Bureau, *Press Release: Statement from Census Bureau Director Steve Dillingham* (Nov. 19, 2020) (online at [www.census.gov/newsroom/press-releases/2020/statement-post-collection-processing.html](http://www.census.gov/newsroom/press-releases/2020/statement-post-collection-processing.html)).

<sup>3</sup> Letter from Chairwoman Carolyn B. Maloney, Committee on Oversight and Reform, to Director Steven Dillingham, U.S. Census Bureau (Nov. 19, 2020) (online at <https://oversight.house.gov/news/press-releases/committee-demands-documents-after-reports-that-career-census-experts-warned-that>).

<sup>4</sup> *Hutcheson v. United States*, 369 U.S. 599 (1962) (“But surely a congressional committee which is engaged in a legitimate legislative investigation need not grind to a halt whenever responses to its inquiries might potentially be harmful to a witness in some distinct proceeding, *Sinclair v. United States*, supra, at 295, or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135, 179-180.”); *Sinclair v. United States*, 279 U.S. 263, 295 (1929)], or when crime or wrongdoing is disclosed, *McGrain v. Daugherty*, 273 U.S. 135, 179-180.”); *Sinclair*, 279 U.S. at 295 (“It may be conceded that Congress is without authority to compel disclosure for the purpose of aiding the prosecution of pending suits; but the authority of that body, directly or through its committees to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.”).

<sup>5</sup> U.S. Const. Art. 1, sec. 2 (the decennial census “shall be made ... in such manner as [Congress] shall by law direct”); *Trump v. Mazars USA*, 590 U.S. \_\_\_ (2019) (the “power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function”) (quoting *McGrain*, 273 U. S. at 174); *Id.* (“The congressional power to obtain information is ‘broad’ and ‘indispensable.’”) (quoting *Watkins v. United States*, 354 U. S. 178 (1957)).

<sup>6</sup> House Rule X clause 1(n) (granting jurisdiction to the Committee on Oversight and Reform over issues including “population and demography generally, including the Census” and the “overall economy, efficiency, and management of government operations”); House Rule X clause 4(c)(2) (the Oversight Committee “may at any time conduct investigations of any matter”).

The Department's insistence on withholding documents due to "ongoing litigation" raises questions about whether the Administration is seeking to conceal information not only from Congress, but from the Judiciary. The Supreme Court heard oral arguments just this week in a challenge to President Trump's order to exclude undocumented immigrants from the Census count. During these arguments, Justices asked Jeffrey Wall, the Acting Solicitor General at the Department of Justice, to clarify the anticipated schedule for completing Census data processing. In response, the Acting Solicitor General stated that the "situation is fairly fluid."<sup>7</sup>

### **New Internal Documents Obtained by Committee**

Despite the Trump Administration's efforts to withhold documents sought by the Committee, we have now obtained three internal documents from another source that not only confirm reports that the Census Bureau will take several additional weeks to resolve data anomalies and produce an accurate count as required by the Constitution, but that also indicate that these anomalies are more serious than first reported.

According to these internal documents, career officials have now identified at least 15 anomalies that impact more than one million Census records. The documents indicate that the Bureau needs until January 23, 2021, to complete the census count and transmit apportionment figures to the President—and until February 3, 2021, to transmit data called for by the President's memorandum attempting to exclude undocumented immigrants.

One of these internal documents, a November 19, 2020, presentation for senior Census Bureau officials, warns that addressing these data anomalies "impacts overall end date by 20 days" and anticipates that the population count will not be complete until between January 26, 2021, and February 6, 2021. The document also notes, "If new anomalies are identified they will be tracked, assessed and additional time maybe required for comprehensive release."<sup>8</sup>

This document describes 13 anomalies identified as of November 19 that impact more than 900,000 census records. For example:

- Career officials discovered a problem related to certain duplicate non-response follow-up records across all 50 states, explaining, "If this issue isn't correct[ed], the most accurate record may not be selected."
- Career officials identified a data error from the enumeration of group quarters that impacts more than 16,000 records and, if not corrected, "may result in undercount[ed] persons."

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<sup>7</sup> Transcript of Oral Argument, *Trump v. New York* (Nov. 30, 2020) (No. 20-366) ([www.supremecourt.gov/oral\\_arguments/argument\\_transcripts/2020/20-366\\_k537.pdf](http://www.supremecourt.gov/oral_arguments/argument_transcripts/2020/20-366_k537.pdf)).

<sup>8</sup> U.S. Census Bureau, *Post-Collection Processing—DRF-1: Current Anomalies Requiring Patches as of Nov. 19, 2020* (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Document%201.pdf>) (Document #1).

- Career officials identified a “coding error” affecting approximately 46,000 records in nine states, explaining, “If this error isn’t corrected demographic data for persons will be missed and may impact the final pop counts.”<sup>9</sup>

This document also sets forth a detailed 11-step process for correcting these anomalies, including developing and testing a comprehensive patch with more than a dozen individual patches, and verifying that these anomalies have been fully resolved. The document cautions that taking shortcuts could compound these problems and lead to even more errors, warning, “If the sequencing of patch deployment isn’t executed properly may result in other data anomalies.”<sup>10</sup>

A second internal Census Bureau document provides subsequent updates on data anomalies one week later—as of November 27, 2020. This document shows that, since the first document was produced, career officials identified two additional errors, including one that impacts more than 240,000 records and risks causing a “significant overcount” in certain areas.<sup>11</sup>

A third internal Census Bureau document provides an updated schedule as of the same date, November 27, 2020. This document shows that career officials will deliver the “Final Apportionment Transmittal Package” to the Department of Commerce on January 23, 2020, and that the “Apportionment Counts” will be sent to the President on the same day. This document also shows that the “Transmittal Package of Resident Population, Federally Affiliated Overseas Population, and Unauthorized Population by State” will be completed on February 3, 2021.<sup>12</sup>

### **Demand for Withheld Documents**

Director Dillingham stated publicly on November 19, 2020, that he was “directing the Census Bureau to utilize all resources available to resolve this as expeditiously as possible” and that the Census Bureau’s “goal remains an accurate and statistically sound Census.”<sup>13</sup> However, the documents obtained by the Committee—some of which were created after his public statements—indicate that these problems may be getting worse instead of better.

By blocking the production of the full set of documents requested by the Committee last month, the Trump Administration is preventing Congress from verifying the scope of these anomalies, their impact on the accuracy of the Census, and the time professionals at the Census Bureau need to fix them.

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> U.S. Census Bureau, *DRFI Anomaly Summary* (Nov. 27, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Document%202.pdf>) (Document #2).

<sup>12</sup> U.S. Census Bureau, *2020 Census Post-Collection Processing* (Nov. 27, 2020) (online at <https://oversight.house.gov/sites/democrats.oversight.house.gov/files/Document3.pdf>) (Document #3).

<sup>13</sup> U.S. Census Bureau, *Press Release: Statement from Census Bureau Director Steve Dillingham* (Nov. 19, 2020) (online at [www.census.gov/newsroom/press-releases/2020/statement-post-collection-processing.html](http://www.census.gov/newsroom/press-releases/2020/statement-post-collection-processing.html)).

Your failure to cooperate with the Committee’s investigation appears to be part of a dangerous pattern of obstruction with the Census. For example, in response to a previous Committee request, you failed to provide the Committee with another key document that the Committee was able to obtain from another source. On September 2, 2020, the Committee released that internal document warning that the Trump Administration’s plan to rush data processing created a high risk of an inaccurate census. This document, which apparently was presented to you on August 3, 2020, highlighted that the compressed schedule you imposed will “reduce accuracy” and “creates risk for serious errors not being discovered in the data.”<sup>14</sup>

You personally have played a key role in blocking the production of information to the Committee regarding the Trump Administration’s efforts to politicize the 2020 Census—even after it was subpoenaed. For example, in July 2019, the House of Representatives held you in contempt for refusing to produce documents revealing the real reason that you tried to add a citizenship question to the Census—an effort that the Supreme Court ruled was illegal and was based on a pretext.<sup>15</sup>

For all of these reasons, I request that you produce by December 9, 2020, a complete and unredacted set of the following documents—all of which were requested by the Committee on November 19, 2020—or inform us whether the Committee should instead issue a subpoena to compel their production:

1. All documents, including memoranda and slide presentations, prepared or used in connection with briefings for you, Director Dillingham, or other Trump Administration officials regarding data processing anomalies, data accuracy, or potential delays, including in particular any briefings on November 18 or 19, 2020;
2. All documents regarding any data processing anomalies, errors, problems, or concerns identified by Census Bureau employees during the processing of 2020 Census data;
3. All documents regarding the accuracy of 2020 Census data processed by the Census Bureau; and
4. All documents regarding the schedule for data processing for the 2020 Census, the impact of a compressed schedule on data processing or data accuracy, or the need for additional time for data processing.

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<sup>14</sup> Committee on Oversight and Reform, *Press Release: Oversight Committee Releases New Internal Census Bureau Document Warning of Risk of “Serious Errors”* (Sept. 2, 2020) (online at <https://oversight.house.gov/news/press-releases/oversight-committee-releases-new-internal-census-bureaudocument-warning-of-risk>).

<sup>15</sup> Committee on Oversight and Reform, *Press Release: House Holds Attorney General and Commerce Secretary in Contempt* (July 17, 2020) (online at <https://oversight.house.gov/news/press-releases/house-holds-attorney-general-and-commerce-secretary-in-contempt>); *Department of Commerce v. New York*, 588 U.S. \_\_\_ (2019).

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The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. In addition, the Committee has jurisdiction over “Population and demography generally, including the Census.”<sup>16</sup>

Sincerely,

A handwritten signature in blue ink that reads "Carolyn B. Maloney". The signature is written in a cursive style and is positioned above a horizontal line.

Carolyn B. Maloney  
Chairwoman

Enclosure

cc: The Honorable James R. Comer, Ranking Member

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<sup>16</sup> House rule X, clause 1(n)(8).

## Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
  - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - b. Document numbers in the load file should match document Bates numbers and TIF file names.
  - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.