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VIA EMAIL AND REGULATIONS.GOV

Jennifer Jessup
Departmental Paperwork Clearance Officer
Department of Commerce
Room 6616
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Re: 2020 Decennial Census; Docket number USBC-2018-0005

Dear Ms. Jessup:

We write on behalf of the Counties of Santa Clara and San Mateo, California (the "Counties") in response to the Department of Commerce's (the "Department") request for comment on proposed information collection in connection with the 2020 Decennial Census (the "2020 Census"), Docket number USBC-2018-0005.

We write to express the Counties' opposition to the addition of a question on citizenship on the 2020 Census and the plan for imputation of "invalid, inconsistent, or missing" responses to this question from administrative sources. Taken together, as the Bureau's own staff have acknowledged, far from being necessary for the proper performance of the Department's functions, the Bureau's proposed actions will significantly undermine the accuracy and utility of information collected during the 2020 Census by unlawfully causing a systemic and discriminatory undercount of minority and immigrant populations. This undercount will disproportionately impact the Counties and is likely to lead to an unfair and unjustified reduction in the Counties' federal funding. It also is virtually certain to sabotage the Counties' ability to properly protect public health and safety and to undercut the economic vitality of the region by interfering with businesses' ability to plan for the future.

What is particularly striking, however, is that there is no lawful justification for the citizenship question proposal—and the Department has pursued a shocking course of conduct in

advancing it. The Department has misled the public and lawmakers about the reasons for its decision and made the decision against the recommendations of career staff, with the knowledge that the decision will ensure a discriminatory undercount. And it has selected this course against the backdrop of a better, non-discriminatory option recommended by its own personnel—one that, by the Census Bureau’s own estimation, will produce better and more reliable data.

As the Census Bureau puts it, “[t]he framers of the Constitution of the United States chose population to be the basis for sharing political power, not wealth or land.”¹ As a result, the purpose of the decennial census—the information collection at issue here—is “is to count everyone once, only once, and in the right place” so that political power is justly and properly shared.² The information collection methodology³ that the Department has proposed is certain to thwart this aim, and it was adopted with, at best, indifference to this certainty. As a result, the information collection methodology proposed by the Bureau cannot lawfully—and should not ultimately—be adopted. Far from being necessary for the proper functions of the agency, the proposed citizenship question cripples them.

The proposal to include of a citizenship question on the 2020 Census should be rejected. The citizenship question’s exclusion would vastly enhance the quality and utility of the information to be collected.

I. FACTUAL BACKGROUND

a. *The Counties of Santa Clara and San Mateo*

The Counties of Santa Clara and San Mateo have, since the 1850s, provided essential services throughout Silicon Valley. Today, 1.9 million people reside in Santa Clara County and another 771,000 in San Mateo County. Those residents rely on the Counties to provide essential

¹ Ex. 1, U.S. Census Bureau, “Decennial Census of Population and Housing: Why We Conduct the Decennial Census,” <https://www.census.gov/programs-surveys/decennial-census/about/why.html>

² *Id.*

³ As noted in the request for comment on the 2020 Decennial Census data collection, the Census Bureau plans to emphasize an internet self-response option to improve response rates. If properly implemented, an internet-based response could lead to improved efficacy and cost savings, but it also comes with new and untested risks to a complete and accurate count, including cybersecurity concerns and disparate internet access. To address internet access imbalances and support a complete count, the County of Santa Clara plans to make computers at certain public facilities (e.g., county libraries) available for residents to submit online questionnaires. Although fraud detection efforts will be imperative with the online-response option and the County encourages robust cybersecurity measures to safeguard confidentiality, the Census Bureau should ensure that its fraud detection efforts do not exacerbate disparate internet access concerns. For example, the County was informed by the Census Bureau that its criteria for identifying potentially fraudulent responses includes multiple online responses from a single IP address. The Census Bureau should ensure that IP addresses for computers facilitating internet access for the general public to respond are not flagged as potentially indicative of fraud. One approach to balancing these concerns would be to establish a method by which IP addresses serving the public-access function are registered with the Census Bureau, so that multiple responses from the address will not be considered indicative of fraud.

services, such as law enforcement, health and hospital care, education, care for youth and elderly, and social services. Many of the Counties' programs serve the neediest residents, including abused and neglected children, indigent and uninsured individuals requiring health care, persons who are mentally ill or substance dependent, and persons who are physically or mentally disabled.

The Counties also oversee most regional public health and public safety functions, including emergency planning and services, disease control and prevention, and criminal justice administration, in addition to operating roads, airports, parks, libraries, election systems, fire departments, and many other critical functions.

The United States Constitution requires an "actual Enumeration" of the population to be conducted every ten years. U.S. Constitution, Art. 1 § 2, cl. 3. The results of this count underlie critical aspects of American political and civic life. It is used in the apportionment of congressional representation⁴ and in drawing local political district boundaries.⁵ It forms the basis for the allocation of federal funding the Counties use to provide life-saving health and safety services including, for example, Medicaid, the Children's Health Insurance Program, and the supplemental nutrition program for women, infants, and children.⁶ It is also used extensively in local public health planning, to protect the health and wellbeing of all members of our communities.⁷

If census response rates are artificially depressed, the Counties' federal funding will be inappropriately reduced. As a result, as the safety-net service providers for the region, the Counties will have to absorb costs associated with diminished funding for these services. The Counties' Public Health departments also rely upon Census data to perform public health planning; inaccurate data—particularly data that systemically undercounts particular populations—will degrade the Counties' ability to perform their public-health duties.

The Counties are likely to be disproportionately affected by any undercount of immigrant communities, because such communities are a core part of their populations. Estimates reflect that Santa Clara County is home to one of the nation's largest populations of undocumented

⁴ U.S. Constitution, Art. 1 § 2, cl. 3.

⁵ Cal. Elec. Code § 21500.

⁶ Ex. 2, Marisa Hotchkiss and Jessica Phelan, *Uses of Census Bureau Data in Federal Funds Distribution* at 3 (Sept. 2017), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/working-papers/Uses-of-Census-Bureau-Data-in-Federal-Funds-Distribution.pdf>

⁷ *See, e.g.*, Ex. 3, Emily Baumgaertner, "A Citizenship Question on the Census May Be Bad for Your Health," *New York Times* (Feb. 14, 2018), <https://www.nytimes.com/2018/02/14/us/politics/citizenship-question-census-public-health.html>; Ex. 4, Marta Induni, "Adding A Citizenship Question to the 2020 Census Would Be Disastrous for Public Health," *STATNews* (Apr. 13, 2018), <http://www.phi.org/news-events/1414/adding-a-citizenship-question-to-the-2020-census-would-be-disastrous-for-public-health>.

immigrants,⁸ and 38% of the County's residents are foreign-born.⁹ Similarly, according to recent estimates, roughly 7% of San Mateo County's residents are unauthorized,¹⁰ and 35% are foreign-born.¹¹

b. The Proposed Citizenship Question

On March 28, 2017, President Donald Trump announced to his supporters that he had “officially mandated that the 2020 United States Census ask people living in the United States whether or not they are citizens.” President Trump’s email referred to the decision, announced in a March 26, 2018 memorandum from Department Secretary Wilbur Ross (the “Ross Memorandum,” attached here as Exhibit 8), to include a citizenship question on the 2020 decennial census form sent to all households¹² for the first time since 1950.¹³ The memorandum went on to say that the data generated by the question would be verified by reference to administrative sources.¹⁴

The Ross Memorandum represents an abrupt and unjustified reversal of the Census Bureau’s long-held view that such a question should *not* be included in the questionnaire provided to all American households. While the Ross Memorandum referred to collection of citizenship data as “long-standing historical practice,” no decennial census since 1950 has asked all responders to provide citizenship information.¹⁵ Instead, questions about citizenship have been confined to the American Community Survey (“ACS”), which, according to the Ross Memorandum, samples roughly 2.6 percent of the population, and to the census decennial “long form” survey sent to roughly 17% of the population.¹⁶

The Department initially contended that its decision to add a citizenship question was in response to a request from the Department of Justice (the “DOJ”), which purportedly made the request in order to use the data in lawsuits under the Voting Rights Act of 1965.¹⁷ It was

⁸ Ex. 5, Migration Policy Institute, “State and County Estimates of Unauthorized Immigrants,” <https://www.migrationpolicy.org/sites/.../State-County-Unauthorized-Estimates.xlsx> (“MPI Estimates”).

⁹ Ex. 6, U.S. Census Bureau, Quick Facts: Santa Clara County, California, <https://www.census.gov/quickfacts/fact/table/santaclaracountycalifornia,CA/POP645216>.

¹⁰ Ex. 5, MPI Estimates.

¹¹ Ex. 7, U.S. Census Bureau, Quick Facts: San Mateo County, California, <https://www.census.gov/quickfacts/fact/table/sanmateocountycalifornia/PST045217>.

¹² Ex. 8, Ross Memorandum at 4-5.

¹³ See U.S. Census Bureau, Index of Questions, https://www.census.gov/history/www/through_the_decades/index_of_questions/.

¹⁴ Ex. 8, Ross Memorandum at 4-5.

¹⁵ See Ex. 9, U.S. Census Bureau, Measuring America: The Decennial Censuses from 1790 to 2000 (2002), https://www2.census.gov/library/publications/2002/dec/pol_02-ma.pdf.

¹⁶ Ex. 10, Jennifer D. Williams, The 2010 Decennial Census: Background and Issues, 3 (Feb. 3, 2011), <https://www.census.gov/history/pdf/2010-background-crs.pdf>

¹⁷ *State of New York v. U.S. Dept. of Commerce*, No. 18-cv-2921-JMF, 2018 WL 3581350, at *25 (July 26, 2018 S.D.N.Y.).

revealed in litigation, however, that in fact the request came from the Department, not from the DOJ: Mr. Ross prompted DOJ to make the request. Two significant memoranda have also been recently revealed, both of which show that the Bureau's career staff have carefully examined the question whether a citizenship question should be included on the 2020 Census, and have concluded that it should not, because it will lead to an undercount that will have a disparate impact on minority and immigrant communities.¹⁸ Instead, the Bureau's Chief Scientist twice concluded that the same information can be obtained more accurately, for less cost, and in a way that does not harm the quality of the census count by obtaining citizenship data for the whole 2020 Census population using administrative records.¹⁹

Nevertheless, based on the Ross Memorandum, the Census Bureau has announced its intention to include the following citizenship question in the decennial census questionnaire sent to all households:²⁰

The image shows a screenshot of a form titled "Is this person a citizen of the United States?". The form has a light blue background and contains the following options, each with an unchecked checkbox:

- Yes, born in the United States
- Yes, born in Puerto Rico, Guam, the U.S. Virgin Islands, or Northern Marianas
- Yes, born abroad of U.S. citizen parent or parents
- Yes, U.S. citizen by naturalization – Print year of naturalization [dropdown arrow]

Below the fourth option is a four-digit input field for the year of naturalization.

- No, not a U.S. citizen

¹⁸ See, e.g., Ex. 11, Memorandum from John M. Abowd to Wilbur L. Ross, Jr., Technical Review of the Department of Justice Request to Add Citizenship Question to the 2020 Census (Jan. 19, 2018) at 001280-82 ("January Abowd Memorandum") (survey response quality lower for Hispanics and non-Hispanic non-whites than for non-Hispanic whites and differences between citizen and noncitizen response rates and data quality will be amplified by inclusion of citizenship question). The Census Bureau has represented that this information was considered by the Secretary in making the decision to include the citizenship question.

¹⁹ Ex. 11, January Abowd Memorandum at 001227; Ex. 12, Memorandum from John M. Abowd to Wilbur L. Ross re Preliminary Analysis of Alternative D, 001312 (Combined Alternatives B and C) (March 1, 2018) ("March Abowd Memorandum").

²⁰ Ex. 13, U.S. Census Bureau, Questions Planned for the 2020 Census and American Community Survey, 7 (March 2018), <https://www2.census.gov/library/publications/decennial/2020/operations/planned-questions-2020-ac.pdf>. The County also notes that the way the question is presented improperly suggests classes or tiers of residents, suggesting that naturalized citizens are distinct from other citizens. This may further suppress response, particularly in jurisdictions, like the County, with large populations of naturalized citizens.

II. ADDITION OF THE CITIZENSHIP QUESTION IS UNLAWFUL

The addition of a citizenship question sacrifices the core purpose of the decennial census—an accurate enumeration—for no benefit. What is more, the Census Bureau has entirely failed to meet its own standards for evaluating the impact on accuracy of adding this question. As a result, the proposed actions violate the Enumeration Clause, U.S. Constitution, Art. 1 § 2, cl. They are also arbitrary and capricious, an abuse of discretion, and inconsistent with the law, and without observance of procedures required by law, in violation of Section 706(2)(A)-(D) of the Administrative Procedures Act. For the same reasons, the proposed collection of information is *not* necessary for the proper performance of the functions of the agency, and the proposed collection does *not* have practical utility. *See* 44 U.S.C. §§ 3506, 3508.

The decennial census has a single constitutionally mandated purpose: “actual Enumeration” of “Persons” living in the United States—without regard to citizenship status. U.S. Constitution, Art. 1 § 2, cl. 3. While the Secretary of Commerce has discretion to determine the questions included in the decennial census questionnaire, that discretion does not extend to a decision to ignore the Bureau’s own standards for ensuring data accuracy or inclusion of a question that the Bureau’s own data show will ensure an inaccurate count.

The *only* constitutionally mandated purpose of the decennial census is an accurate enumeration of individuals—citizens and non-citizens alike.²¹ Likewise, “the overall goal of the Census Act is accuracy.” *City of Los Angeles v. U.S. Dep’t of Commerce*, 307 F.3d 859, 872 (9th Cir. 2002). Given this, as the Census Scientific Advisory Committee (“CSAC”) recognized, “an accurate count [is] of foremost importance, so any proposed changes should be evaluated in consideration of the potential impact on completeness and accuracy.”²² As the Census Bureau puts it, the purpose of the decennial census, “is to count everyone once, only once, and in the right place.”²³

The proposed information collection is fundamentally inconsistent with these aims. It will produce a less-accurate 2020 Census and will provide no benefit over the Bureau’s proposed alternative. Nor has any rationale or justification been offered that would meet the agency’s burden to show that, despite the known sacrifice of accuracy and the available alternatives, the information collection meets the standards of the Paperwork Reduction Act of 1995.

²¹ U.S. Constitution, Art. 1 § 2, cl. 3.

²² Ex. 14, Recommendations and Comments to the Census Bureau from the Census Scientific Advisory Committee Spring 2018 Meeting (March 30, 2018), http://www.pogoarchives.org/m/cp/POGO-CSAC-Recs-Spring_20180406.pdf (“CSAC Comments”).

²³ Ex. 1, U.S. Census Bureau, “Decennial Census of Population and Housing: Why We Conduct the Decennial Census,” available at <https://www.census.gov/programs-surveys/decennial-census/about/why.html>

a. The Citizenship Question Will Lead to A Discriminatory Undercount

Census experts widely agree—and the Census Bureau’s own data show—that the decision to include a citizenship question ensures that the 2020 Census will not be an accurate enumeration of the population.²⁴ More specifically, the Bureau’s data show that the impact will be felt disproportionately by minority and immigrant communities.²⁵ Moreover, the late-breaking decision to include a citizenship question flies in the face of the Census Bureau’s own standards for statistical quality and rigorous testing of questions.²⁶

Indeed, the decision to add a citizenship question is officially opposed by the Census Bureau’s own Scientific Advisory Committee, which issued a public statement of opposition to the question, emphasizing “the lack of adequate testing, about the implications for nonresponse (unit and item), implications for the cost, and implications for attitudes about the Census Bureau and concerns about confidentiality,” and the fact that that “the rationale offered by Sec. Ross in favor of adding the question relied on flawed logic.”²⁷ The decision was also opposed by the Census Bureau’s Chief Scientist, who concluded that it would cause “[m]ajor potential quality and cost disruptions,” while producing data “with serious quality issues.”²⁸

It is beyond reasonable dispute that addition of a citizenship question will significantly depress response rates, particularly in minority populations, and lead to an inaccurate census. As the Department of Justice told the court in *Fed’n for Am. Immigration Reform v. Klutznick*, a challenge to the Census Bureau’s long-standing position that a citizenship question should *not* be included in the decennial census:

[A]ny effort to ascertain citizenship will inevitably jeopardize the overall accuracy of the population count. Obtaining the cooperation of a suspicious and fearful population would be impossible if the group being counted perceived any possibility of the information being used against them. Questions as to citizenship are particularly sensitive in minority communities and would inevitably trigger hostility, resentment and refusal to cooperate.²⁹

²⁴ See, generally Ex. 11, January Abowd Memorandum; Ex. 12, March Abowd Memorandum.

²⁵ See, e.g., Ex. 11, January Abowd Memorandum at 001280-82 (survey response quality lower for Hispanics and non-Hispanic non-whites than for non-Hispanic whites and differences between citizen and noncitizen response rates and data quality will be amplified by inclusion of citizenship question). The Census Bureau has represented that this information was considered by the Secretary in making the decision to include the citizenship question.

²⁶ Ex. 15, U.S. Census Bureau, Statistical Quality Standards (July 2013).

https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/quality/statistical-quality-standards/Quality_Standards.pdf (“Census Statistical Quality Standards”).

²⁷ Ex. 14, CSAC Comments.

²⁸ See e.g., Ex. 11, January Abowd Memorandum at 001278.

²⁹ 486 F. Supp. 564, 568 (D.D.C. 1980) (emphasis added). See also U.S. Census Bureau, 1980 Census of Population and Housing History, 1-23 (August 1989) (“[T]he Bureau believed that the inclusion of [a citizenship question]

Since the 1980s, the certainty that a citizenship question would significantly decrease the accuracy of the census has only grown. There is broad agreement among former Census Bureau directors and officials that addition of a citizenship question will depress turnout and have a negative effect on accuracy.³⁰

And, as the Census Bureau's own researchers found during census pretesting, there is an unprecedented level of fear among hard-to-count populations, including the undocumented population, centering on immigration status; this fear resulted, in pretesting, in refusal to complete the survey and falsification of data.³¹ In one case, a respondent "walked out and left interviewer alone in home during citizenship questions."³² One family *moved out of their home* after a pretesting interview based on fear of deportation.³³ Unsurprisingly, the Census Bureau's researchers characterized these fears surrounding immigration among those surveyed "unprecedented," and emphasized that "these concerns might be even more pronounced during a production survey than researchers observed during pretesting."³⁴

The Census Bureau's own career staff has confirmed that addition of a citizenship question will not produce accurate data on citizenship and will degrade the quality of the enumeration overall.³⁵ Strikingly, the Census Bureau's staff has in fact offered an alternative method of obtaining citizenship data that would produce *more accurate* results than inclusion of a citizenship question, but the Bureau has instead opted for the less-accurate method that will, by the Bureau's own calculations, result in a systemic undercount.³⁶ And not just any systemic

would have seriously hampered its efforts to achieve a complete count, as illegal aliens would have been more reluctant than ever to respond to the census.")

³⁰ Ex.8, Ross Memorandum at 6 (noting concerns expressed by Obama- and Bush-era census officials); *Video of Robert Groves*, C-SPAN (Mar. 26, 2010), <https://www.c-span.org/video/?292743-6/2010-us-census&start=1902> ("[W]e don't ask citizenship or documentation status, all of the things that may make people uncomfortable are gone."); Ex. 16, *Counting the Vote: Should Only U.S. Citizens Be Included in Apportioning Our Elected Rep., Hr'g Before the Subcomm. on Federalism and the Census of the Cmte on Gov't Reform*, 109th Cong. 72 (Dec. 6, 2005) (Statement of Kenneth Prewitt), <https://www.gpo.gov/fdsys/pkg/CHRG-109hhrg26074/html/CHRG-109hhrg26074.htm>; Ex. 17, Amicus Br. of Former Directors of the U.S. Census Bureau, *Evenwel v. Abbott*, 136 S. Ct. 1120, 25 (2016) (No. 14-940), <https://campaignlegal.org/sites/default/files/14-940%20Former%20Directors%20of%20the%20U.S.%20Census%20Bureau%20Amici.pdf>.

³¹ Ex. 18, Memorandum from Ctr. for Survey Measurement (CSM) to Assoc. Dir. for Research and Methodology (Sept. 20, 2017), <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.

³² *Id.* at 5.

³³ *Id.*

³⁴ *Id.* at 2.

³⁵ *See, generally* Ex. 11, January Abowd Memorandum; Ex. 12, March Abowd Memorandum.

³⁶ *Id.*

undercount, but one that will reliably and predictably undercount immigrant and racial minority communities.³⁷

b. The Bureau's Process for Including the Question Failed to Comply with the Bureau's Own Standards.

But even if there was not such strong evidence of an impact on accuracy, the Department could not justify the inclusion of the question. Fundamentally, the Department's process for proposing inclusion of a citizenship question was fatally flawed, and the Department has offered no justification for this data collection.

In the face of Census Bureau's nearly 40-year position that a citizenship question should not be included in the decennial census form sent to all households, the Ross Memorandum justifies inclusion of the question on the basis that commenters did not provide evidence demonstrating the magnitude of decreased response rate. First, and most importantly, the Bureau's own career staff concluded that the effect was of sufficient magnitude that they did not recommend the change.³⁸ Second, this approach turns the proper procedure on its head: Particularly against this background, the burden is not on informal comments of stakeholders, outside the normal notice-and-comment procedures (which the Census has declined to undertake here), to show the magnitude of effect of including a question. Instead, the Census relies on its own rigorous standards and testing protocol, none of which were followed here, to show that information collection is *permissible* under the Paperwork Reduction Act.

The Census Bureau has not even attempted to perform the work required to determine the potential impact on completeness and accuracy. And it is too late to do so in time for the 2020 Census. Subjects for inclusion in the census are planned long in advance, to permit the rigorous testing of the subjects, the precise wording of questions, and even the careful positioning of questions on the questionnaire.³⁹ Subjects must be chosen early enough to "ensure sufficient time for testing the questionnaire content," questionnaire design must be optimized, and, once design is optimized, "comprehensive testing of optimized content" in the lab and field tests are

³⁷ See, e.g., Ex. 11, January Abowd Memorandum at 001280-82 (survey response quality lower for Hispanics and non-Hispanic non-whites than for non-Hispanic whites and differences between citizen and noncitizen response rates and data quality will be amplified by inclusion of citizenship question).

³⁸ See, generally Ex. 11, January Abowd Memorandum; Ex. 12, March Abowd Memorandum.

³⁹ Ex. 19, U.S. Census Bureau, 2020 Operational Plan (September 2017), 69-72, <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan3.pdf> ("2020 Operational Plan"); Ex. 20, U.S. Census Bureau, Subjects Planned for the 2020 Census and American Community Survey (March 2017), <https://www2.census.gov/library/publications/decennial/2020/operations/planned-subjects-2020-acs.pdf> ("2020 Planned Subjects"); Ex. 15, Census Statistical Quality Standards; Ex. 21, Jennifer Ortman, "Questions Planned for the 2020 Census and the American Community Survey: A Process Overview" (January 2018), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/pmr-materials/01-26-2018/pmr-2020-operations-01-26-2018.pdf> ("2020 Planned Questions").

required “to prevent unanticipated negative impacts on data quality.”⁴⁰ These procedures are reflected in the Census Bureau’s Statistical Quality Standards.⁴¹ As part of this process, the Bureau is required to report the subjects for inclusion in the decennial census three years before the census is conducted—in this case, in March 2017.⁴²

The Census Bureau has failed to follow these procedures in connection with the citizenship question. The Census Bureau indicated in its 2017 report to Congress that citizenship status was *not* planned for inclusion in the decennial census. Instead, it indicated that it would be included in the ACS, as it was in 2020.⁴³ The Census Bureau reversed course only in March 2018, citing no justification for its failure to comply with 13 U.S.C. § 141(f), and citing no “new circumstances . . . which necessitate that the subjects . . . contained in reports [to Congress] be modified.”

The Census Bureau has also failed to perform any testing of the citizenship question. It was not included in the Census Bureau’s “dress rehearsal” testing, a critical component of census preparation. Indeed, the Census Bureau appears to have failed to perform any testing of the question at all, violating its own Statistical Standards and reversing its own carefully-crafted and long-standing plans for ensuring the quality and accuracy the 2020 Census.⁴⁴

The Ross Memorandum concedes that there is insufficient data to determine the magnitude of the undercount that will result from inclusion of a citizenship question; indeed, this is the basis on which it dismisses concerns about an undercount.⁴⁵ But as the CSAC noted, “the absence of evidence is not evidence of absence.”⁴⁶ The Census Bureau cannot justify its failure to follow the law with its failure to follow its own standards; it cannot refuse to follow even its most basic procedures for determining the impact of a question, then point to the resulting lack of evidence in defense of the question.

⁴⁰ Ex. 19, 2020 Operational Plan at 69.

⁴¹ Ex. 15, Statistical Quality Standards at 6-11.

⁴² 13 U.S.C. 141(f).

⁴³ Ex. 20, 2020 Planned Subjects at 51; Ex. 2, 2020 Planned Questions. As the Ross Memorandum notes, inclusion in the ACS is quite different from inclusion in the decennial census, and planning to include a question on the ACS is not equivalent to planning to include it in the decennial census. Ex. 8, Ross Memorandum at 3 (“When analyzing Option B, the Census Bureau attempted to assess the impact that reinstatement of a citizenship question on the decennial census would have on response rates by drawing comparisons to ACS responses. However, such comparative analysis was challenging, as response rates generally vary between decennial censuses and other census sample surveys.”).

⁴⁴ Ex. 15, Statistical Quality Standards at 6-11; Ex. 22, Lisa M. Blumerman, Planned Development and Submission of Subjects Planned for the 2020 Census Program and Questions Planned for the 2020 Census Program (April 29, 2016), 2-3, https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-memo-2016_05.pdf; Ex. 21, 2020 Planned Questions at 23.

⁴⁵ Ex. 8, Ross Memorandum, at 5-6.

⁴⁶ Ex. 14, CSAC Comments.

Even if it was the Department's true rationale (which the Bureau's own documents show to be false), the sacrifice in accuracy cannot be justified by resort to the DOJ's purported rationale for inclusion of the citizenship question: That it is "critical" to the DOJ's enforcement of Section 3 of the Voting Rights Act, because it will provide citizen voting-age population (CVAP) on a census-block basis. The Bureau's career staff has determined that there is a more reliable, more accurate way to obtain the data, that will not cause so fundamental an interference with the decennial census.⁴⁷ But even if that were not true, the Census Bureau already provides CVAP data to the DOJ through the ACS. Although the ACS does not produce block-level data, the Census Bureau itself has determined that block-level data is unnecessary,⁴⁸ and courts have used and relied on the ACS data provided by the Census Bureau.⁴⁹

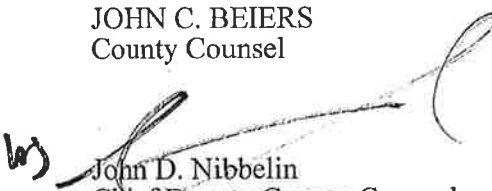
III. CONCLUSION

The Counties urge the rejection of the proposed information collection as relevant to the citizenship question. It is unnecessary and discriminatory, it will degrade the operations of the Agency and the quality of the critical 2020 Census, and it patently violates the law.

Very truly yours,

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Danielle L. Goldstein
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⁴⁷ See generally Ex. 12, March Abowd Memorandum.

⁴⁸ Ex. 23, U.S. Census Bureau, 2000 Census of Population and Housing History, Vol. 1, 39 (Dec. 2009), <https://www.census.gov/history/pdf/Census2000v1.pdf>.

⁴⁹ See, e.g., *Cisneros v. Pasadena Indep. School Dist.*, No. 4:12-CV-2579, 2014 WL 1668500, at *8 (S.D. Tex. Apr. 25, 2014); *Rodriguez v. Harris Cnty.*, 964 F. Supp. 2d 686, 727-28 (S.D. Tex. 2013); *Meza v. Galvin*, 322 F. Supp. 2d 52, 61-62 (D. Mass. 2004).