



**ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND**

99 HUDSON STREET, 12<sup>th</sup> FL • NEW YORK, NY 10013 • TEL 212.966.5932 • [www.aaldef.org](http://www.aaldef.org) • [info@aaldef.org](mailto:info@aaldef.org)

August 1, 2018

**Via E-mail and First Class Mail**

Ms. Jennifer Jessup  
Departmental Paperwork Clearance Officer  
Department of Commerce  
Room 6616  
14<sup>th</sup> and Constitution Avenue, NW  
Washington, DC 20230

**Re: Comments on Proposed Information Collection on 2020 Census, Docket No. USBC-2018-0005**

Dear Ms. Jessup:

The Asian American Legal Defense and Education Fund (AALDEF), a member of New York Counts 2020,<sup>1</sup> submits this comment in response to the Census Bureau’s Federal Register Notice regarding Proposed Information Collection for the 2020 Census, 83 FR 26643 (June 8, 2018).

**We urge the Department of Commerce to remove the citizenship question from the 2020 Census form, as it will jeopardize the accuracy of the census in all communities—an outcome that the entire nation will have to live with for the next ten years.**

AALDEF, founded in 1974, is a New York-based national organization that protects and promotes the civil rights of Asian Americans through litigation, advocacy, education, and organizing. Voter access and political empowerment are at the core of AALDEF’s mission, and we recognize that this work is deeply intertwined with the success of the Census. For every decennial census since 1990, AALDEF has undertaken major multilingual community education campaigns to promote Asian American participation and address community concerns, including confidentiality. We have also advocated for and educated the community regarding the Census Bureau’s American Community Survey (ACS), including the potential to improve access and accuracy by translating the ACS into more Asian languages.

For every major election since 1988, AALDEF has conducted the nation’s largest nonpartisan survey of Asian American voters, and monitored poll sites for compliance with laws such as the Voting Rights Act (VRA). We have led redistricting efforts in New York City and numerous other jurisdictions across the country, contributing research and advocating for the creation of district maps that more accurately reflect the changing demographics of these jurisdictions and protect the voting rights of minority groups. In 2015, AALDEF submitted an *amicus* brief in the

---

<sup>1</sup> New York Counts 2020 is a broad-based statewide coalition of more than sixty organizations (racial, ethnic, immigrant, religious, health, education, labor, housing, social services, and business groups) working to ensure that New Yorkers—particularly those in historically hard-to-count communities—maximize their participation in the 2020 Census.

Supreme Court’s redistricting case of *Evenwel v. Abbott*<sup>2</sup> to voice support for the underlying philosophy of the Census: that our representative government takes account of *every person* that it governs, such that our nation’s *total population* is the appropriate metric for determining congressional representation.<sup>3</sup>

### **Faulty Rationale**

As a civil rights organization that has done extensive work to promote both the Census and voting rights, we write to dispel any notion that the Census Bureau’s proposed citizenship question would advance either cause. On the contrary, bipartisan census experts, including six former directors of the Census Bureau and two former Commerce Secretaries from Republican and Democratic administrations, have reached overwhelming consensus that asking about citizenship status would result in an inaccurate undercount, particularly in the current political climate.<sup>4</sup> Such an attempt to add the citizenship question to the 2020 Census at this late stage (without even the pretense of proper vetting and testing) upends decades of established practice, protocol, and procedure, flies in the face of federal laws that set crucial minimum standards for accuracy in data collection, and most importantly, blatantly shirks your constitutional duty of “actual enumeration.”

Moreover, the stated rationale for adding this citizenship question does not comport with the available evidence or with common sense. Secretary of Commerce Wilbur Ross claimed that he first decided to include the citizenship question on the 2020 Census after a Department of Justice (DOJ) request explaining that this data would help DOJ better enforce Section 2 of the VRA. The administrative record contains so much evidence to the contrary that only the willfully blind would fail to see through this pretext.<sup>5</sup> The current DOJ administration has shown virtually no interest in enforcing Section 2 (or any provision) of the VRA.<sup>6</sup> Moreover, since the VRA was enacted in 1965, the decennial census has never included a citizenship question, yet the VRA has

---

<sup>2</sup> 136 S. Ct. 1120 (2016).

<sup>3</sup> *Id.* at 1132 (“As the Framers of the Constitution and the Fourteenth Amendment comprehended, representatives serve all residents, not just those eligible or registered to vote.”); see also U.S. CENSUS BUREAU, *Census in the Constitution*, <https://www.census.gov/programs-surveys/decennial-census/about/census-constitution.html> (last updated Mar. 10, 2016) (“The Founders of our fledgling nation had a bold and ambitious plan to empower the people over their new government. The plan was to count *every person living in the newly created United States of America*, and to use that count to determine representation in the Congress. . . . The genius of the Founders was taking a tool of government and making it a tool of political empowerment for the governed over their government.”).

<sup>4</sup> See, e.g., January 26, 2018 Letter from Former Census Bureau Directors to Secretary of Commerce Wilbur Ross, available at [https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ\\_census\\_ques\\_request\\_Former\\_Directors\\_ltr\\_to\\_Ross.pdf?tid=a\\_mcntx](https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf?tid=a_mcntx).

<sup>5</sup> See *Commerce Department’s Administrative Record For Census Citizenship Question Lawsuits*, available at <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record>; see also, e.g., Hansi Lo Wang, *Documents Shed Light On Decision To Add Census Citizenship Question*, NPR (June 10, 2018), <https://www.npr.org/2018/06/10/618567462/documents-shed-light-on-decision-to-add-census-citizenship-question>.

<sup>6</sup> See U.S. DEP’T OF JUSTICE, *Voting Section Litigation*, <https://www.justice.gov/crt/voting-section-litigation> (last updated Aug. 1, 2018). DOJ’s last publicized complaint under Section 2 of the VRA was filed on January 10, 2017, before current Attorney General Jeff Sessions was sworn into office. Under Sessions, DOJ has even reversed its position by *withdrawing* a key VRA objection in an existing case against Texas voter ID laws. Pam Fessler, *Justice Department Reverses Position On Texas Voter ID Law Case*, NPR (Feb. 27, 2017), <https://www.npr.org/2017/02/27/517558469/justice-department-reverses-position-on-texas-voter-id-law-case>.

been effectively enforced for decades (for example, from 2000 until the beginning of the current administration, DOJ brought thirty cases under Section 2 of the VRA).

On March 26, 2018, Secretary Ross sent a memorandum announcing his decision to include a citizenship question in the 2020 Census.<sup>7</sup> Secretary Ross began by citing a December 12, 2017 letter from DOJ General Counsel requesting the inclusion of the citizenship question in order to “fully enforce” “Section 2 of the Voting Rights Act and its important protections against racial discrimination in voting.”<sup>8</sup> This letter noted the purported drawbacks of using data from the ACS (the current source of citizenship data for VRA litigation), but failed to mention *any* examples where DOJ had been hindered by the lack of decennial census citizenship data. Moreover, using decennial census data has its own drawback: it can only be collected every ten years, and in many instances might be outdated by the time of litigation under Section 2 of the VRA.<sup>9</sup> By contrast, ACS data is calculated more frequently.

In fact, Congress has specifically instructed the Census Bureau to shift to more up-to-date data measures for another provision of the VRA, Section 203. Section 203 includes the language provisions of the VRA, to “provide language assistance during elections for certain language minority groups.” Like Section 2, Section 203 also requires citizenship data in its calculations. As the Census Bureau has recognized, when Congress reauthorized the VRA in 2006 and extended these language provisions, it also “instructed the Bureau on two changes: Use the American Community Survey; conduct the determinations every five years rather than every ten as done in the past.”<sup>10</sup> AALDEF has litigated extensively under the VRA, and Section 203 in particular. We can attest that the already-available ACS citizenship data has been not only sufficient, but even preferable in providing more up-to-date data than a decennial census, particularly given the advanced survey sampling methodology now used by the Census Bureau.

In his March 26, 2018 memorandum, Secretary Ross acknowledged that the last decennial census that asked the citizenship question took place in 1950, almost seventy years ago. Still, Secretary Ross abruptly concluded that “the citizenship question has been well tested,” largely due to its inclusion on sample surveys such as the ACS. Yet Secretary Ross included very limited ACS analysis in his memorandum about how the citizenship question could affect different minority groups (notably, the entire memorandum contained *no* analysis or mention of the impact on Asian Americans). Ultimately, Secretary Ross effectively dismissed the objections of numerous census experts,<sup>11</sup> noting that “while there is widespread belief among many parties

---

<sup>7</sup> March 26, 2018 Memorandum from Secretary Wilbur Ross to Karen Dunn Kelley re: Reinstatement of a Citizenship Question on the 2020 Decennial Census Questionnaire, *available at* [https://www.commerce.gov/sites/commerce.gov/files/2018-03-26\\_2.pdf](https://www.commerce.gov/sites/commerce.gov/files/2018-03-26_2.pdf).

<sup>8</sup> *Text of Dec. 2017 DOJ letter to Census*, at 1, *available at* <https://www.documentcloud.org/documents/4340651-Text-of-Dec-2017-DOJ-letter-to-Census.html>.

<sup>9</sup> According to the Census “Population Clock,” as of July 2018, the United States has a “[n]et gain of one person every 12 seconds.” U.S. CENSUS BUREAU, *U.S. and World Population Clock*, <https://www.census.gov/popclock/> (last visited July 16, 2018). Such population growth would certainly add up over the ten years between decennial censuses.

<sup>10</sup> U.S. CENSUS BUREAU, *Section 203 Language Determinations*, <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/voting-rights-determination-file.html> (last updated July 17, 2018).

<sup>11</sup> *See, e.g., Commerce Department’s Administrative Record For Census Citizenship Question Lawsuits*, at 1277, *available at* <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p1289/a428453> (according to the Census Bureau’s chief scientist, John Abowd, adding a

that adding a citizenship question could reduce response rates, the Census Bureau’s analysis did not provide definitive, empirical support for that belief” (precisely *because* the Census Bureau has not adequately tested this citizenship question on the decennial census).

In a later June 21, 2018 memorandum,<sup>12</sup> Secretary Ross admitted that he and his staff first considered the citizenship question “[s]oon after [his] appointment as Secretary of Commerce,” and *subsequently* “consulted with Federal governmental components and inquired whether the Department of Justice (DOJ) would support, and if so would request, inclusion of a citizenship question as consistent with and useful for enforcement of the Voting Rights Act.”<sup>13</sup> As we know, DOJ ultimately “sent a letter formally requesting that the Census Bureau reinstate on the 2020 Census questionnaire a question regarding citizenship,”<sup>14</sup> with the convenient *ex post facto* justification of better enforcing Section 2 of the VRA.

Secretary Ross has proclaimed that in adding the citizenship question to the 2020 Census, he had “prioritized the goal of obtaining *complete and accurate data*.” We share the same goal, but this citizenship question has no place in any good faith effort to procure the most complete and accurate census data. After all, data is only useful if it is accurate, while inaccurate census data would lead to an unfair and inefficient allocation of representation and resources. Any theoretically plausible benefit of including a citizenship question on the 2020 Census would be far outweighed by the likely decrease in accuracy, as well as the increase in taxpayer costs.<sup>15</sup>

### **Asian American Population**

AALDEF also writes to highlight the unique perspective of the Asian American community regarding the proposed citizenship question. Asian Americans stand to lose a great deal from an inaccurate 2020 Census. Asian Americans are the nation’s fastest growing racial group, with population increasing from 17.3 million as of the 2010 Census<sup>16</sup> to 21.4 million by 2016.<sup>17</sup> According to census data, as of 2018, “noncitizens (both legal and undocumented) comprise . . . 32% of Asian adults—in contrast to just 2% for whites. While many . . . Asian children were born in the U.S. and are therefore citizens, they may not be included in the census if their foreign-born noncitizen parents choose not to respond. Similarly, census responses of many mixed-status citizen/noncitizen households would also be limited.”<sup>18</sup>

---

citizenship question to the 2020 Census would be “very costly, harm[] the quality of the census count, and would use substantially less accurate citizenship status data than are available from administrative sources”).

<sup>12</sup> *Supplemental Memo by Commerce Secretary Wilbur Ross*, available at <https://apps.npr.org/documents/document.html?id=4550951-Supplemental-Memo-by-Wilbur-Ross>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., *Commerce Department’s Administrative Record For Census Citizenship Question Lawsuits*, at 1282, available at <https://apps.npr.org/documents/document.html?id=4500011-1-18-Cv-02921-Administrative-Record#document/p1289/a428453> (calculating around \$55 million in extra costs for each percentage point increase in non-response follow-up).

<sup>16</sup> U.S. CENSUS BUREAU, *The Asian Population: 2010*, at 1, 4 (2012), available at <https://www.census.gov/prod/cen2010/briefs/c2010br-11.pdf>.

<sup>17</sup> U.S. CENSUS BUREAU, *FFF: Asian-American and Pacific Islander Heritage Month: May 2018*, <https://www.census.gov/newsroom/facts-for-features/2018/asian-american.html> (last updated May 3, 2018).

<sup>18</sup> William H. Frey, *Commentary: These Are the Groups Most Likely to Stop Participating in the U.S. Census*, FORTUNE (Mar. 29, 2018), <http://fortune.com/2018/03/29/us-citizenship-question-census/>.

Unfortunately, Asian Americans also share a history that evokes particular skepticism of the Census Bureau’s confidentiality policies. Today, confidentiality and data privacy are significant concerns in the context of the Census.<sup>19</sup> For many Asian Americans, these concerns are not merely theoretical. During World War II, the Census Bureau released information to the U.S. Secret Service and thus played a key role in facilitating the forced incarceration of Japanese Americans.<sup>20</sup> In another recent instance, the Census Bureau supplied the Department of Homeland Security (DHS) with information about neighborhoods with large numbers of Arab Americans.<sup>21</sup> The Census Bureau has defended these indiscretions by noting that the actions were technically legal.<sup>22</sup> Perhaps it is more unsettling to see how tenuous these legal protections can be. During World War II, former Census Bureau Director William Lane Austin initially stood in the way of efforts to loosen census confidentiality laws in order to obtain data about Japanese Americans. But Austin was later replaced by J.C. Capt, whose efforts helped clear the way to eventually provide block-level information about Japanese Americans living in California, Arizona, Wyoming, Colorado, Utah, Idaho, and Arkansas, and even microdata (names and addresses of *individuals*) for Japanese Americans living in Washington, D.C.<sup>23</sup>

Too often, we have compromised our fundamental principles in the name of national security. In 1944, the Supreme Court in *Korematsu v. United States*<sup>24</sup> validated our wartime policy of incarcerating 120,000 Japanese Americans. At that time, the Court explained that “[r]egardless of the true nature of the assembly and relocation centers — and we deem it unjustifiable to call them concentration camps with all the ugly connotations that term implies — we are dealing specifically with nothing but an exclusion order. To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue.”<sup>25</sup> Recently, the Supreme Court made another historic ruling in *Trump v. Hawaii*,<sup>26</sup>

---

<sup>19</sup> These privacy and confidentiality concerns can only be exacerbated by the nomination of a potential Supreme Court justice whose record establishes his view that “critical national security need [can] outweigh[] the impact on privacy” (for example, in the context of the National Security Agency’s metadata collection program). *Klayman v. Obama*, 805 F.3d 1148, 1148–49 (D.C. Cir. 2015) (Kavanaugh, J., concurring).

<sup>20</sup> Lori Aratani, *Secret use of census info helped send Japanese Americans to internment camps in WWII*, WASHINGTON POST (Apr. 6, 2018), [https://www.washingtonpost.com/news/retropolis/wp/2018/04/03/secret-use-of-census-info-helped-send-japanese-americans-to-internment-camps-in-wwii/?utm\\_term=.d610aa14c728](https://www.washingtonpost.com/news/retropolis/wp/2018/04/03/secret-use-of-census-info-helped-send-japanese-americans-to-internment-camps-in-wwii/?utm_term=.d610aa14c728).

<sup>21</sup> *Id.* Notably, when a Census Bureau analyst emailed the DHS to ask about “the usage of that data, given the sensitivity of different data requests we have received about the Arab population,” the DHS official replied, “[a]t U.S. International airports, U.S. Customs posts signage informing various nationalities of the U.S. Customs regulations to report currency brought into the US upon entry. . . . My reason for asking for U.S. demographic data is to aid the Outbound Passenger Program Officer in identifying which language of signage, based on U.S. ethnic nationality population, would be best to post at the major International airports.” Email Correspondence Between Census Bureau and Department of Homeland Security, *available at* [https://epic.org/privacy/census/foia/census\\_emails.pdf](https://epic.org/privacy/census/foia/census_emails.pdf). Given the timing of the request for data about Arab Americans in the wake of 9/11, and the lack of data requests for any other ethnic group, crediting this explanation would also require something akin to willful blindness.

<sup>22</sup> Aratani, *supra* note 20 (noting that standard census confidentiality protections were suspended under the Second War Powers Act in March 1942, and later reinstated in 1947; and that the post-9/11 disclosures only compiled data that was already publicly available).

<sup>23</sup> *Id.*

<sup>24</sup> 323 U.S. 214 (1944).

<sup>25</sup> *Id.* at 223.

<sup>26</sup> 138 S. Ct. 2392 (2018).

regarding the so-called travel ban. The Court validated this exclusion order in light of purported national security concerns, leaving us with an uncanny sense that history is repeating itself.<sup>27</sup>

As history professor Margo Anderson has observed, “[w]hatever the hot-button issue of the time is,” it seems to “get[] tangled up in the census.”<sup>28</sup> It certainly appears that the rights of immigrants, and particularly non-citizens, could be the “hot-button issue” of our time. Less than one month ago, the Supreme Court in *Trump v. Hawaii* identified citizenship as a strong distinguishing factor between *Korematsu*<sup>29</sup> and the so-called travel ban. Regarding the incarceration of Japanese Americans, the Court noted that “[t]he forcible relocation of U.S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful and outside the scope of Presidential authority. But it is wholly inapt to liken that morally repugnant order to a facially neutral policy denying certain *foreign nationals* the privilege of admission,” as in the case of the travel ban.<sup>30</sup> The same disregard for the rights of non-citizens is glaringly apparent in the current administration’s immigration statements and policies.<sup>31</sup>

AALDEF recognizes that today’s Census Bureau has made extensive efforts to ensure the confidentiality of census data, and urges that the Bureau strive to protect all people’s data privacy and confidentiality (perhaps even through additional protective measures). But AALDEF also understands and shares the concerns of our community, which are rooted in historical understanding and are especially salient for many Asian Americans, particularly non-citizens. While there are certainly laws in place today to protect the confidentiality of census data, these do not inspire as much confidence in the context of an unpredictable administration that constantly stokes anti-immigrant sentiment under the guise of “national security.” Former Commerce Secretary Norman Mineta, who was himself sent to a Japanese internment camp, explained the unique fears associated with the addition of a citizenship question under the Trump

---

<sup>27</sup> Despite the *Korematsu* Supreme Court’s mental acrobatics to distinguish the Japanese internment camps from the “ugly connotations” associated with the term “concentration camps,” and to deny that the policy was based on “racial prejudice,” a subsequent Supreme Court would describe Japanese internment as exactly that: the “forcible relocation of U.S. citizens to concentration camps, solely and explicitly on the basis of race.” *Trump v. Hawaii*, 138 S. Ct. at 2423. And while the *Trump v. Hawaii* Supreme Court describes the travel ban merely as “a facially neutral policy denying certain foreign nationals the privilege of admission,” *id.*, Justice Sotomayor pointed out the “stark parallels” between this case and *Korematsu*: “As here, the Government invoked an ill-defined national-security threat to justify an exclusionary policy of sweeping proportion. As here, the exclusion order was rooted in dangerous stereotypes about, inter alia, a particular group’s supposed inability to assimilate and desire to harm the United States. As here, the Government was unwilling to reveal its own intelligence agencies’ views of the alleged security concerns to the very citizens it purported to protect. And as here, there was strong evidence that impermissible hostility and animus motivated the Government’s policy.” *Id.* at 2447 (Sotomayor, J., dissenting) (citations omitted).

<sup>28</sup> Katy Steinmetz, *The Debate Over a New Citizenship Question Isn’t the First Census Fight. Here’s Why the Count Is Controversial*, TIME (Mar. 27, 2018), <http://time.com/5217151/census-questions-citizenship-controversy/>.

<sup>29</sup> Even in the dissent in *Korematsu*, Justice Jackson began by immediately pointing out that *Korematsu* himself “was born on our soil . . . . The Constitution makes him a citizen of the United States by nativity . . . . No claim is made that he is not loyal to this country. There is no suggestion that apart from the matter involved here he is not law-abiding and well disposed.” 323 U.S. at 242–43 (Jackson, J., dissenting).

<sup>30</sup> *Trump v. Hawaii*, 138 S. Ct. at 2423 (emphasis added).

<sup>31</sup> For example, as Thomas Homan, acting director of the U.S. Immigration and Customs Enforcement (ICE), ominously noted in the context of the citizenship question, undocumented immigrants “should be uncomfortable. You should look over your shoulder. And you need to be worried.” Stephen Dinan, *No apologies: ICE chief says illegal immigrants should live in fear of deportation*, WASH. TIMES (June 13, 2017), <https://www.washingtontimes.com/news/2017/jun/13/thomas-homan-ice-chief-says-illegal-immigrants-sho/>.

administration: “[j]ust the nature of this administration makes people that much more wary about what [the Census Bureau] might be asking about. I don’t think there’s much confidence in the ability of this administration to have any credibility in terms of protecting privacy issues. For them that’s just a fishing license.”<sup>32</sup> In this political climate, the only way to definitively address the fears of immigrants regarding the confidentiality of their census data is to remove the citizenship question from the 2020 Census.

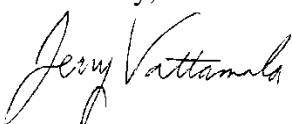
Implementing an accurate decennial census is first and foremost a constitutional duty. For centuries, census officials have operated in good faith and kept the decennial census short, accessible, and poised for the best chance of success at “actual enumeration.” We recognize that this is difficult and often thankless work performed with little recognition or fanfare. But we agree that the “U.S. decennial census is a hallowed institution that lies at the heart of our democracy. It is a giant civic engagement project that allows people to proclaim that they are residents of this great land and, by virtue of the Constitution, which mandates it, ensures that they will be fairly represented by Congress.”<sup>33</sup>

As one census expert noted, “[i]t would be a disgrace to see the 2020 census used as a political football, with tweets from the White House to rile up some voting blocs while frightening other groups into not participating.”<sup>34</sup> To do so would be an abuse of power, and exploiting the operation of a neutral and fundamental government process for political gain sets a dangerous precedent.

The Department of Commerce should not include an untested citizenship question on the 2020 Census, when that data is already available from the ACS. The sham request from the DOJ under the guise of protecting minority voting rights should be disregarded as the farce that it clearly is.

We thank you in advance for your serious consideration, and appreciate this opportunity to submit a comment regarding the potential inclusion of a citizenship question on the 2020 decennial census questionnaire.

Sincerely,



Jerry Vattamala  
Director, Democracy Program  
212.966.5932 x209  
jvattamala@aaldef.org

Patricia Yan  
Legal Fellow, Democracy Program  
212.966.5932 x207  
pyan@aaldef.org

---

<sup>32</sup> Aratani, *supra* note 20.

<sup>33</sup> Frey, *supra* note 18.

<sup>34</sup> *Id.*