THE COUNCIL OF
THE CITY OF NEW YORK
CITY HALL
NEW YORK, NY 10007

October 28, 2026

Submitted via www.regulations.gov

U.S. Census Bureau
Department of Commerce
4600 Silver Hill Road, Designation: ADDEMO/FRN
Washington, DC 20746

Re: Census Bureau Docket No. USBC-2026-0628, Comment in Response to Proposed Rule: "Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions"

Dear Sir/Madam:

As Speaker of the Council of the City of New York, I am submitting this comment on behalf of the legislative body for the largest city in the United States. We are writing to express our strong opposition to the U.S. Census Bureau's proposed rule, Docket No. USBC-2026-0628, entitled *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions*, which would add two new parts to the Code of Federal Regulations governing the decennial census of population and housing. Specifically, the proposed rule would change who is included in the congressional apportionment count, how the Census Bureau determines where people are counted, and what demographic information can be collected on census enumeration questionnaires in the following ways:

- Non-U.S. citizens without a green card would be excluded from the congressional apportionment count;[1]
- Race and ethnicity data collection would be eliminated;[2] and
- The Census Bureau would use tax records to help determine where people are counted.[3]

The Census Bureau is also considering "the inclusion of a legal-status question on the short-form decennial census questionnaire."[4]

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[1] Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 91 Fed. Reg. 57524 (proposed Sept. 10, 2026) (to be codified at 15 C.F.R. parts 60 and 70), https://www.govinfo.gov/content/pkg/FR-2026-09-10/pdf/2026-18481.pdf [hereinafter PROPOSED RULE].
[2] *Id.*
[3] *Id.*

The proposed rule seeks to outline the residence criteria used for identifying each person's "usual residence," as needed to determine whether and where to count them in the decennial census throughout the United States.[5] As stated, the Census Bureau intends for this rule to better fulfill the Constitutional mandate to count the "whole number of persons in each State" by proposing new Residence Criteria. The proposed rule, however, runs contrary to the Census Bureau's mission of serving "as the nation's leading provider of quality data about its people and economy"[6] and counting each resident of the United States.[7] The proposed rule would exclude millions of residents, including many who are lawfully present in the United States. It would also compromise effective resource allocation, thereby negatively impacting the health, educational, and economic outcomes of our youngest New Yorkers. We therefore oppose the proposed rule.

1. **The Provisions of the U.S. Constitution Pertaining to the Decennial Census Require an Enumeration of All Persons, Irrespective of Citizenship or Immigration Status.**

Article I, Section 2, Clause 3 of the U.S. Constitution empowers the Congress to carry out the decennial census, the purpose of which is to count every person living in the United States and to use that count to determine representation in the Congress.[8] The Constitution calls for an "actual Enumeration" and does not distinguish between those with citizenship or immigration status and those without such status.[9] As ratified in 1787, the "actual Enumeration" would count "the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."[10]

The drafting history of Article I, Section 2 demonstrates the Framers' intent to include noncitizens in the apportionment base. The earlier draft of Article I, Section 2 encompassed two clauses – an Apportionment Clause and a Direct Taxation Clause. The draft Apportionment Clause stated that Congress would "regulate the number of representatives by the number of inhabitants, according to the rule hereinafter made for direct taxation."[11] The Direct Taxation Clause provided that "[t]he proportions of direct taxation shall be regulated by the whole number of free citizens and inhabitants, of every age, sex, and condition, including those bound to servitude for a term of years, and three fifths of all other persons not comprehended in the foregoing description, (except Indians not paying taxes)."[12] The Committee of Style subsequently consolidated these provisions

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[4] *Id.*
[5] U.S. Bureau of the Census, *Regulatory Impact Analysis, Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions* [Proposed Rule, Docket No: USBC-2026-0628] (Sept. 10, 2026), https://www.regulations.gov/document/USBC-2026-0628-0002 [hereinafter Census Bureau Analysis of Rule].
[6] United States Census Bureau, "About the Bureau," available at https://www.census.gov/about.html.
[7] United States Census Bureau, "Decennial Census of Population and Housing," available at https://www.census.gov/programs-surveys/decennial-census.html.
[8] U.S. Const. art. I, § 2, cl. 3.
[9] *Id.*
[10] *Id.*
[11] 2 *Records of the Federal Convention of 1787* at 566, 571 (M. Farrand ed. 1911).
[12] *Id.* at 571.

into Article I, Section 2,[13] which omitted references to "free citizens" in favor of "free Persons."

During their debates on Article I, Section 2, the Framers acknowledged that the number of persons residing in each state, not the number of voters, would determine the number of representatives.[14] For instance, Alexander Hamilton noted in a speech that, "every individual of the community at large has an equal right to the protection of government."[15] In *The Federalist* No. 54, James Madison expounded on the significance of Article I, Section 2: "It is a fundamental principle of the proposed Constitution, that ... the aggregate number of representatives allotted to the several States is to be ... founded on the aggregate number of inhabitants ...."[16] The Federalist Nos. 56 and 58 reiterate the decision of the drafters of the Constitution to apportion based on the number of inhabitants.[17] Madison acknowledged that "[t]he qualifications on which the right of suffrage depend are not, perhaps, the same in any two States.... In every State, a certain proportion of inhabitants are deprived of this right [but] ... will be included in the census by which the federal Constitution apportions the representatives."[18] These instructive passages leave no doubt that the Framers intended to apportion congressional representation based on the number of a state's inhabitants, or residents, rather than the number of a state's citizens.

In 1865, the Civil War ended, and the Thirteenth Amendment abolished slavery. On June 13, 1866, Congress passed the Fourteenth Amendment. By July 9, 1868, the Fourteenth Amendment was ratified by the states.

At the debates over the Fourteenth Amendment, Congress discussed how to adjust the apportionment formula.[19] The Fourteenth Amendment changed the formula for apportionment by deleting the provisions for enslaved people as well as indentured servants.[20] The new formula apportioned representatives based on "the whole number of persons in each state, excluding Indians not taxed."[21]

The drafters of the Fourteenth Amendment considered further modifying Article I, Section 2. "Concerned that Southern States would not willingly enfranchise freed slaves," the drafters considered the "possibility of allocating House seats to States on the

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[13] *Id.* at 553.
[14] 1 *Records of the Federal Convention of 1787* at 580-81 (M. Farrand ed. 1911) (notes of James Madison on Constitutional Convention proceedings on Wednesday, July 11, 1787).
[15] *Id.* at 473 (notes of Representative Robert Yates of New York on Constitutional Convention proceedings on Friday, June 29, 1787).
[16] *The Federalist* No. 54 (Madison).
[17] *See The Federalist* No. 56 (Hamilton or Madison) (stating that the Constitution mandates "a representative for every thirty thousand inhabitants"); The Federalist No. 58 (Madison) (noting that the Constitution requires "readjust[ing], from time to time, the apportionment of representatives to the number of inhabitants").
[18] *The Federalist* No. 54 (Madison).
[19] *See Evenwel v. Abbott*, 578 U.S. 54, 136 S. Ct. 1120, 1128, 194 L.Ed.2d 291 (2016) ("[T]he apportionment issue consumed more time in the Fourteenth Amendment debates than did any other topic.") (quoting J. Sneed, *Footprints on the Rocks of the Mountain: An Account of the Enactment of the Fourteenth Amendment* 28 (1997)).
[20] *Compare* U.S. Const. art. I, § 2, cl. 3 *with* U.S. Const. amend. XIV, § 2.
[21] U.S. Const. amend. XIV, § 2.

basis of voter population."[22] Representative Thaddeus Stevens of Pennsylvania drafted a proposal "that would have allocated House seats to States 'according to their respective legal voters'" instead of population.[23] The drafters, however, ultimately rejected this proposed language.[24]

The drafters of the Fourteenth Amendment instead embraced "the principle upon which the Constitution itself was originally framed, that the basis of representation should depend upon numbers ... not voters."[25] The drafters of the Fourteenth Amendment understood that the Constitution had traditionally based apportionment on the number of persons residing in each state, not the number of citizens.[26]

During the debates, the drafters recognized that the apportionment base would encompass immigrants:

- "Every man in this House knows perfectly well in the several States . . . unnaturalized citizens cannot vote ... yet for these persons the States are entitled to representation."[27]
- "'Persons' and not 'citizens,' have always constituted the basis" for apportionment, and a proposal to use voters "would narrow the basis of taxation and cause considerable inequalities in this respect, because the number of aliens in some States is very large, and growing larger now, when emigrants reach our shores at the rate of more than a State a year."[28]
- A proposal to base representation on voters would "take[ ] from the basis of representation all unnaturalized foreigners"[29]
- "Under the Constitution as it now is and as it always has been, the entire immigrant population of this country is included in the basis of representation."[30]
- "Foreigners are counted."[31]
- The Fourteenth Amendment cannot "throw[ ] out of the basis at least two and a half millions of unnaturalized foreign-born men and women."[32]
- "Representation is now based upon population," including "foreigners not naturalized."[33]

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[22] *Evenwel*, 136 S. Ct. at 1127 (citing Sneed at 28).
[23] *Id.* at 1128 (quoting Cong. Globe, 39th Cong., 1st Sess. 10 (1866)).
[24] *Id.*
[25] Cong. Globe, 39th Cong., 1st Sess. 2766–67 (1866) (statement of Senator Jacob Howard of Michigan introducing the Fourteenth Amendment on the Senate floor).
[26] *See, e.g.*, *id.* at 705 (statement of Senator William Fessenden of Maine) ("The principle of the Constitution, with regard to representation, is that it shall be founded on population .... [W]e are attached to that idea, that the whole population is represented; that although all do not vote, yet all are heard. That is the idea of the Constitution.").
[27] *Id.* at 353 (statement of Representative Andrew Jackson Rogers of New Jersey).
[28] *Id.* at 359 (statement of Representative Roscoe Conkling of New York).
[29] *Id.* at 411 (statement of Representative Burton Cook of Illinois).
[30] *Id.* at 432 (statement of Representative John Bingham of Ohio).
[31] *Id.* at 961 (statement of Senator Charles Buckalew of Pennsylvania).
[32] *Id.* at 1256 (statement of then-Senator (later Vice President) Henry Wilson of Massachusetts).
[33] *Id.* at 2944 (statement of Senator George Henry Williams of Oregon).

- Apportioning based on voters would be "a blow which strikes the two million one hundred thousand unnaturalized foreigners who are now counted in the basis of representation from that basis."[34]

Like the Framers, the drafters of the Fourteenth Amendment deliberately included noncitizens in the apportionment base. The drafters contended that the elected government would represent noncitizens' interests, even if the noncitizens did not vote.[35] Thus, Congress passed and the states ratified the following text: "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed."[36]

The plain language of the Constitution and the legislative history of Article I, Section 2, and Section 2 of the Fourteenth Amendment straightforwardly demonstrate that the provisions of the Constitution pertaining to the decennial census require an enumeration of all persons, irrespective of citizenship or immigration status. The proposed rule conflicts with this plain language and legislative history. Accordingly, we implore the Census Bureau to rescind this ill-considered proposed rule.

2. The Legal-Status Question Has Never Been Part of the Modern Census and Would Compromise the Accuracy of the Census Count.

The Census Bureau is considering "the inclusion of a legal-status question on the short-form decennial census questionnaire."[37] The inclusion of such a question would contravene generations of census-taking. The census has never asked for the citizenship status of everyone in the country.[38] "The last time a citizenship question was among the census questions for all U.S. households was in 1950. That form asked where each person was born and, in a follow-up question, asked, 'If foreign born — Is he naturalized?' In 1960, there was no such question about citizenship, only about place of birth."[39] Starting in 1970, questions about citizenship were included in the long-form questionnaire, which a much smaller sample of U.S. households receives, but not the short form.[40] "The short form kept it simple: name, relationship, age, sex, Hispanic origin, race, marital status and whether the home is owned or rented."[41] If the 2030 census form ultimately asks about

[34] *Id.* at 2987 (statement of Senator Luke Poland of Vermont).
[35] *See id.* at 141 ("[N]o 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.") (statement of Representative James Blaine of Maine).
[36] U.S. Const. amend. XIV, § 2.
[37] Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions, 91 Fed. Reg. 57524 (proposed Sept. 10, 2026) (to be codified at 15 C.F.R. parts 60 and 70), https://www.govinfo.gov/content/pkg/FR-2026-09-10/pdf/2026-18481.pdf.
[38] Thomas Wolf and Brianna Cea, "A Critical History of the U.S. Census & Citizenship Questions," Brennan Center for Justice, Apr. 2, 2019, https://www.brennancenter.org/our-work/research-reports/critical-history-us-census-citizenship-questions.
[39] Tamara Keith, "FACT CHECK: Has Citizenship Been A Standard Census Question?" NPR, Mar. 27, 2018, https://www.npr.org/2018/03/27/597436512/fact-check-has-citizenship-been-a-standard-census-question.
[40] *Id.*
[41] *Id.*

citizenship status, it will be the first time the U.S. census has directly asked for the citizenship status of every person living in every household.[42]

The Census Bureau's own research shows that a legal-status question is likely to compromise the accuracy of the census count.[43] A 2025 peer-reviewed study based on earlier research by the Census Bureau concluded that the response rates for many of the groups that historically have been least responsive to the census questionnaire would have fallen even lower if questionnaires for the last census had asked, "Is this person a citizen of the United States?"[44] Adding this kind of question likely "reduces the total number of people in the count and disproportionately undercounts" populations that have been historically underrepresented in census results.[45] An inaccurate census count would distribute inadequate political representation and insufficient federal funding to New York communities. We strongly urge the Census Bureau to abandon this inequitable proposed rule.

3. The Inclusion of a Legal-Status Question Will Result in an Undercount, and New York City will Suffer a Direct Loss of Federal Funding as a Result.

Historically, many groups have been disproportionately undercounted in the census.[46] For instance, in the 2010 census, the Census Bureau estimates that, nationally, it undercounted renters by 1.1 percent, Blacks by 2.1 percent, and Hispanics by 1.5 percent.[47] Meanwhile, non-Hispanic whites were overcounted by 0.8 percent.[48] Common Cause New York, analyzing hard-to-count census tracts on a comparative state-by-state basis, concluded that New York State had the second largest population in hard-to-count tracts and the third largest population percentage in hard-to-count tracts.[49] In New York State, the majority of hard-to-count census tracts are in New York City.[50] New York City

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[42] *Id.*

[43] Hansi Lo Wang, "Trump officials propose sweeping changes to the census that would reshape voting maps," NPR, Oct. 2, 2026, https://www.npr.org/2026/09/09/nx-s1-5845147/trump-us-census-citizenship-question-race-categories.

[44] J. David Brown and Misty L. Heggeness, "Citizenship question effects on household survey response," Journal of Policy Analysis and Management, Mar. 20, 2025, available at https://onlinelibrary.wiley.com/doi/10.1002/pam.70004; *see also* Hansi Lo Wang, "A new study quantifies how a citizenship question would likely hurt census accuracy," NPR, Mar. 25, 2025, https://www.npr.org/2025/03/25/nx-s1-5338905/census-citizenship-question-trump.

[45] J. David Brown and Misty L. Heggeness, "Citizenship question effects on household survey response," Journal of Policy Analysis and Management, Mar. 20, 2025, available at https://onlinelibrary.wiley.com/doi/10.1002/pam.70004.

[46] SUSAN LERNER, ET AL., TAKING ACTION TO AVOID A CENSUS 2020 CRISIS 1, 10–11 (Common Cause N.Y., N.Y. Counts 2018), http://www.commoncause.org/new-york/wp-content/uploads/sites/20/2018/05/the-count-starts-now-2020-census.pdf; Legislation Funding and Supporting Census Work, 2020 Census Resources and Legislation, National Conference of State Legislatures, http://www.ncsl.org/research/redistricting/2020-census-resources-and-legislation.aspx (last visited October 9, 2019).

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

[48] *Id*.

[49] LERNER, *supra* note 46 at 1.

[50] N.Y. STATE COMPLETE COUNT COMM'N, A ROADMAP TO ACHIEVING A COMPLETE 2020 CENSUS COUNT IN NEW YORK STATES 52 (Oct. 2019), available at https://www.ny.gov/sites/ny.gov/files/atoms/files/finalcompletecountcommissionreport.pdf.

has high concentrations of historically hard-to-count populations, including people of color, limited English proficient communities, immigrants, low-income households, renters and young children.[51] As the New York State Complete Count Commission notes, inaccuracies of just a point or two represent millions of people, and the difference is most greatly felt in diverse states like New York.[52]

According to the Census Bureau, nationwide, an estimated five percent of children under the age of five—about one million kids—were not counted in the 2010 Census.[53] According to the New York State Complete Count Commission, New York City had more children under age five in low-responding census tracts than any other city in the country.[54] The Commission found that these children predominately lived in low-income areas and were more likely to be Black or Hispanic than the overall population of children under age five.[55]

New York City's population is nearly 40 percent immigrants.[56] Further, New York City contains approximately 71 percent of the state's noncitizen population.[57] The first Trump Administration attempted to add a question asking whether each person in a household was a citizen to the 2020 Census, stoking fear in immigrant communities.[58] Importantly, the U.S. Supreme Court prevented the citizenship question from being added to the 2020 Census.[59] Nevertheless, advocate and government stakeholders argued in 2019 that attention surrounding the Trump Administration's failed attempt to add a

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[51] Susan Lerner, et al., Taking Action to Avoid a Census 2020 Crisis, Common Cause New York, page 1, http://www.commoncause.org/new-york/wp-content/uploads/sites/20/2018/05/the-count-starts-now-2020-census.pdf.

[52] N.Y. STATE COMPLETE COUNT COMM'N, A ROADMAP TO ACHIEVING A COMPLETE 2020 CENSUS COUNT IN NEW YORK STATES, (Oct. 2019) at 16, available at https://www.ny.gov/sites/ny.gov/files/atoms/files/finalcompletecountcommissionreport.pdf.

[53] Counting Young Children in the 2020 Census, U.S. Census Bureau fact sheet (Aug. 29, 2018), *available at* https://www.census.gov/content/dam/Census/newsroom/press-kits/2018/counting-young-children-in-2020-census.pdf. A 2016 Census Bureau report estimated that the 2010 Census missed double that, around 10 percent of children ages zero to four. U.S. CENSUS BUREAU, INVESTIGATING THE 2010 UNDERCOUNT OF YOUNG CHILDREN—A NEW LOOK AT 2010 CENSUS OMISSIONS BY AGE (July 26, 2019) at 11, *available at* https://www2.census.gov/programs-surveys/decennial/2020/program-management/memo-series/2020-report-2010-undercount-children-ommissions.pdf. *See also* N.Y. STATE COMPLETE COUNT COMM'N, A ROADMAP TO ACHIEVING A COMPLETE 2020 CENSUS COUNT IN NEW YORK STATES, (Oct. 2019) at 14, available at https://www.ny.gov/sites/ny.gov/files/atoms/files/finalcompletecountcommissionreport.pdf (citing 2016 Census Bureau report).

[54] N.Y. STATE COMPLETE COUNT COMM'N, A ROADMAP TO ACHIEVING A COMPLETE 2020 CENSUS COUNT IN NEW YORK STATES, (Oct. 2019) at 14, available at https://www.ny.gov/sites/ny.gov/files/atoms/files/finalcompletecountcommissionreport.pdf (citing The Leadership Conference Education Fund, (Aug. 2017) "Tables: Hard-to-Count Children and Their Communities," https://civilrights.org/children-htc-tables).

[55] *Id*. (citing U.S. CENSUS BUREAU, INVESTIGATING THE 2010 UNDERCOUNT OF YOUNG CHILDREN—ANALYSIS OF CENSUS COVERAGE MEASUREMENT RESULTS (January 2017), available at https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2020-2017_04-undercount-children-analysis-coverage.pdf.

[56] N.Y.C. MAYOR'S OFFICE OF IMMIGRANT AFFAIRS ANNUAL REPORT (2019) at 9, 13, available at https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report%202019_final.pdf.

[57] *New York v. United States Dep't of Commerce*, 351 F. Supp. 3d 502, 595 (S.D.N.Y.), *aff'd in part, rev'd in part and remanded sub nom. Dep't of Commerce v. New York*, 139 S. Ct. 2551 (2019).

[58] *See* Katie Rogers, Adam Liptak, Michael Crowley and Michael Wines, *Trump Says He Will Seek Citizenship Information From Existing Federal Records, Not the Census*, N.Y. TIMES (July 11, 2019), https://www.nytimes.com/2019/07/11/us/politics/census-executive-action.html.

[59] *See id*.; *Dep't of Commerce v. New York*, 139 S. Ct. at 2575-76.

citizenship question amplified long-running fears of interacting with government and could depress the immigrant response rate on the 2020 Census.[60] According to a January 2019 Quinnipiac University poll, there was heightened concern over the citizenship question among New York City immigrants and Hispanics: 25 percent of Hispanics and 24 percent of immigrants said that a citizenship question would discourage them from participating in the census, compared to 15 percent of all New York City adults.[61] Further, 73 percent of immigrants reported being concerned about the privacy and security of their personal information.[62]

Census Bureau pre-2020 field-testing also revealed how serious and widespread mistrust in immigrant communities had become. Bureau field representatives described experiences interacting with immigrant respondents who were afraid to provide information about members of their households or provided false information, or were afraid the information would be used to arrest or deport them.[63] Bureau staff reports included a respondent who fled his apartment mid-interview, leaving the Bureau interviewer behind, and another respondent household who moved out of their mobile home following a door knock from Bureau staff.[64]

An undercount of immigrant New Yorkers may result in New York losing federal funds and representation in Congress, among other unfortunate consequences.[65] Many immigrant communities also overlap with other hard-to-count populations.[66] Nearly one million people in New York City, including one in six children, live in "mixed-status" households comprised of at least one undocumented immigrant and at least one person with U.S. citizenship or lawful immigration status.[67] Entire households may go uncounted, or be only partially counted if a respondent does not want to call attention to immigrants in the household.[68] In the original district court decision striking the

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[60] *See* Kelly Percival and Brianna Cea, *Four Takeaways from the Supreme Court's Census Citizenship Question Ruling*, BRENNAN CENTER (July 1, 2019), https://www.brennancenter.org/blog/four-takeaways-supreme-courts-census-citizenship-question-ruling. *See also* N.Y. STATE COMPLETE COUNT COMM'N, A ROADMAP TO ACHIEVING A COMPLETE 2020 CENSUS COUNT IN NEW YORK STATES, (Oct. 2019) at 5, available at https://www.ny.gov/sites/ny.gov/files/atoms/files/finalcompletecountcommissionreport.pdf (arguing that the very effort to include the citizenship question could result in depressed response rates within certain communities).

[61] Quinnipiac University poll: Citizenship Question Will Reduce Census Response, New Yorkers Tell Quinnipiac University Poll; Most Expect Question Will Discourage Immigrants, January 31, 2019, https://poll.qu.edu/new-york-city/release-detail?ReleaseID=2597.

[62] *Id*.

[63] N.Y. STATE COMPLETE COUNT COMM'N, A ROADMAP TO ACHIEVING A COMPLETE 2020 CENSUS COUNT IN NEW YORK STATES, (Oct. 2019) at 19-20, available at https://www.ny.gov/sites/ny.gov/files/atoms/files/finalcompletecountcommissionreport.pdf.

[64] *Id*. at 20.

[65] *See New York v. United States Dep't of Commerce*, 351 F. Supp. 3d at 593-99; David Colon, *How the 2020 census citizenship question will affect New York's headcount*, CITY & STATE (April 11, 2018), https://www.cityandstateny.com/articles/policy/policy/2020-census-citizenship-question-will-affect-new-yorks-headcount.html.

[66] David Colon, *How the 2020 census citizenship question will affect New York's headcount*, CITY & STATE (April 11, 2018), https://www.cityandstateny.com/articles/policy/policy/2020-census-citizenship-question-will-affect-new-yorks-headcount.html (citing Thomas Wolf, the counsel at the Brennan Center for Justice).

[67] Center for Migration Studies, "Data Briefing: A Portrait of Immigrant New Yorkers," Nov. 14, 2025, available at https://cmsny.org/publications/data-briefing-on-new-york-city-immigrants/.

[68] David Colon, *How the 2020 census citizenship question will affect New York's headcount*, CITY & STATE (April 11, 2018), https://www.cityandstateny.com/articles/policy/policy/2020-census-citizenship-question-

citizenship question from the 2020 Census, the Southern District of New York found that if a citizenship question resulted in an expected 5.8 percent undercount of people who lived in noncitizen households and Hispanics, then New York would face "a substantial risk" of losing a seat in Congress.[69] Relying on analysis by researchers at The George Washington University, the court also found that an undercount of these communities by as little as two percent would cause New York to lose federal funding for programs such as Special Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), Social Services Block Grants authorized under the Social Security Act to reduce dependency and prevent neglect or abuse of children and adults, and Title I education grants.[70] Even a miniscule net differential undercount of people living in noncitizen households could cause New York to lose federal funds distributed on the basis of census-derived data, including child abuse prevention grants, Older Americans Act ("OAA") grants for programs on aging, education funding under the Every Student Succeeds Act, Temporary Assistance for Needy Families ("TANF") funding and Community Services Block Grants ("CSBG"), among others.[71]

The rule for generations has been simple: if you live in New York, you count. All New Yorkers deserve fair representation, which can be achieved only with a comprehensive census count. Accordingly, we urge the Census Bureau to rescind this harmful proposed rule.

4. The Census Enumeration Period Distorts the Count

The proposed rule change redefines "usual residence" to be to be where a person has "lawfully spent the greatest number of days during the census enumeration period."[72] The "census enumeration period" specifically runs from January 3 until April 1.[73] This creates a very limited period of time in which a person's residency counts. In particular, this has major implications for seasonal migration. A 2005 study, which focused on Florida, indicated that "snowbirds," or people who leave colder climates for warmer ones in the winter, spend more than three months at their secondary residence.[74] In contrast, "sunbirds," or people who leave hotter climates for cooler ones in the summer, tend to spend shorter periods of time in their secondary residence.[75]

One state may receive an influx of people in January through April months, where that number could be hundreds of thousands of people.[76] The 2020 Census estimated the

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will-affect-new-yorks-headcount.html; N.Y. STATE COMPLETE COUNT COMM'N, A ROADMAP TO ACHIEVING A COMPLETE 2020 CENSUS COUNT IN NEW YORK STATES, (Oct. 2019) at 19-20, available at https://www.ny.gov/sites/ny.gov/files/atoms/files/finalcompletecountcommissionreport.pdf.

[69] *New York v. United States Dep't of Commerce*, 351 F. Supp. 3d at 594.

[70] *Id*. at 597.

[71] *Id*. *See also* Expert report and declaration of Andrew Reamer, September 7, 2018, at pages 39-41, available at https://www.dropbox.com/s/7yfhywwqggymxok/Expert%20Report%20of%20Andrew%20Reamer.pdf?dl=0.

[72] PROPOSED RULE, *supra* note 1 at 57529 (to be codified at 15 C.F.R. § 60.2(a)).

[73] *Id.* at 57529 (to be codified at 15 C.F.R. § 60.2(c)).

[74] *Snowbirds and "sunbirds" cause big shifts in Florida's older populations*, UNIV. OF FLA. NEWS (Dec. 11, 2006), https://archive.news.ufl.edu/articles/2006/12/snowbirds-and-sunbirds-cause-big-shifts-in-floridas-older-population.html [hereinafter *Snowbirds*].

[75] *Id.*

[76] *Id.*

average Congressional district to have a population of 761,169.[77] Estimates on the number of snowbirds that can migrate to one state may exceed 800,000.[78] This suggests that the limited time window could potentially create entirely new congressional districts in some states that would exist to represent large swaths of people who, for most of the year, do not reside in that district or even that state. Additionally, it would take representation away from those states where snowbirds would migrate from, artificially lowering the population count in those states because the census enumeration period is not large enough to capture where a person resides for most of the year. It is worth noting that the two states most likely to be destinations for snowbirds are Florida and Texas.[79]

Sunbirds, despite performing the same act, but in climatic reverse, would have no effect on the Census count. Because their seasonal migration would be outside the census enumeration period, they would be counted at the place they reside for the majority of the year. This emphasizes the oddity of both of these groups leaving their homes to potentially spend months in secondary homes being counted differently. The behavior is the same for each, yet the outcome for the count wildly diverges.

Additionally, the concept of the census enumeration period conflicts with the rules passed for the last Census. During the prior Trump Administration, the Census Bureau used the standard concept of "usual residence," meaning the prior Census Bureau simply counted people based on "where they live and sleep most of the time."[80] This more natural understanding of "usual residence" allows for a more accurate count of where people actually reside and not simply where they happen to be during the enumeration period.

5. The Continuation of Counting Incarcerated People at the Place of Confinement Perpetuates Prison Gerrymandering

The proposed rule continues counting people incarcerated in prisons as where they are incarcerated instead of where their home is. This practice reallocates where political power lies by presuming that an incarcerated person permanently resides in the facility where they are detained.

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[77] U.S. CENSUS BUREAU, *Apportionment of Seats in the U.S. House of Representatives and Average Population Per Seat: 1910 to 2020*, U.S. DEP'T OF COMMERCE, https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-data-table.pdf.

[78] *See, e.g.*, *Snowbirds*, *supra* note74.

[79] Maria Gatea & Victor Maghear, *America's Top Snowbird Destinations for 2026–2027: Florida Leads in Numbers, Texas Wins on Value*, STORAGE CAFÉ (Oct. 1, 2026), https://www.storagecafe.com/blog/best-snowbird-destinations-usa-2026-2027/; Catherine Stoddard, *Top snowbird destinations: New report reveals 2 states claiming 88 of top 100 cities*, FOX LOCAL, https://www.livenowfox.com/news/top-snowbird-destinations-new-report-reveals-2-states-claiming-88-top-100-cities.

[80] U.S. CENSUS BUREAU, *Residence Criteria and Residence Situations for the 2020 Census of the United States*, https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2020-Census-Residence-Criteria.pdf; *see also* 18 Red. Reg. 42,577 (2016), https://www.federalregister.gov/documents/2016/06/30/2016-15372/proposed-2020-census-residence-criteria-and-residence-situations ("'Usual residence' has been defined as the place where a person lives and sleeps most of the time. This place is not necessarily the same as a person's voting residence or legal residence.").

The mean amount of time someone spends in state prison is 2.7 years.[81] The median, which is perhaps a more accurate measure in this instance, is only fifteen months.[82] People who are incarcerated in a prison tend not to remain in the area of the prison upon release but, instead, return to their home communities.[83] Prisons are disproportionately located in predominantly White, rural areas.[84] Over 70% of new prisons since the 1970s were built in rural areas.[85] A similar trend can be seen in New York state, where roughly 98% of prison cells are located in disproportionately white State Senate districts.[86] People incarcerated are disproportionately people of color from urban communities.[87]

The act of counting incarcerated people where they are incarcerated rather than their home or last known address substantively interferes with the political power and funding of cities.[88] For voting purposes, people who are incarcerated tend to vote at their last known address rather than at the address of the facility in which they are detained. It has been stated that "[i]t would certainly be an anomaly to hold that [a group of people legally domiciled in a district] are not residents for the purpose of determining the population of the district, but that they are residents for the purpose of voting."[89] While such a quote was stated in the context of a census done outside of the Census period for the purposes of determining whether a vote could be called in a school district, the logic remains. Given that state laws and constitutions often will prevent incarceration from affecting the residency of an incarcerated person for voting purposes,[90] it is counter to the consensus of what it means to reside somewhere for the Census to count incarcerated people at their place of incarceration rather than their home. Indeed, a prison cannot be a residence as they are "place[s] of confinement for all" where a person cannot be detained "as a prisoner, having a right to be there only as a prisoner, and gain a residence there."[91]

Continuing to count incarcerated people at the place they are incarcerated only perpetuates the siphoning of power from urban communities of color. It is a practice that must end.

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[81] Aleks Kajshura, *Most incarcerated people will return home; the census Bureau should count them there*, PRISON POL'Y INITIATIVE (May 14, 2024), https://www.prisonersofthecensus.org/news/2024/05/14/home-addresses/.
[82] *Id.*
[83] *See id.*
[84] ARLYSS HERZIG, BRENNAN CTR., PRISON GERRYMANDERING DISTORTS REPRESENTATION 3 (Feb. 2026), https://www.brennancenter.org/media/15129/download/bcj-166_prison_gerrymandering.pdf.
[85] *Id.*
[86] *See* Dale Ho, *Captive Constituents: Prison-Based Gerrymandering and the Current Redistricting Cycle*, 22 STANFORD L. & POL'Y REV. 355, 361 (2011), https://law.stanford.edu/wp-content/uploads/2018/03/ho.pdf.
[87] *See Criminal Justice Fact Sheet*, NAACP, https://naacp.org/resources/criminal-justice-fact-sheet (last visited Oct. 23, 2026) (noting that if African Americans and Hispanic people were incarcerated at the same rate as White people that the overall population for incarcerated people would drop by 40%).
[88] *See* Ho, 22 STANFORD L. & POL'Y REV. at 360.
[89] *Oswego Cmty. Consol. Sch. Dist. No. 434 v. Goodrich*, 171 N.E.2d 816, 820 (Ill. App. Ct. 1961).
[90] *See, e.g.*, N.Y. Const. art. III, § 4 ("For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his or her presence or absence, . . . while confined in any public prison."); S.C. Code Ann. § 7-1-25 (requiring that a person abandon their prior home, establish a new home, and intend to make that new home their permanent home with no intent to leave).
[91] *See People v. Cady*, 37 N.E. 673, 675 (N.Y. 1894).

6. Overreliance on Tax Records and Other Administrative Documents Will Lead to an Inaccurate Count

The proposed rule includes the language "A person's 'usual residence' should be consistent with, and evidenced by, their tax records (e.g., tax returns, W-2 forms)."[92] This suggests a greater use of tax records than in 2020 where such records were used to identify some nonrespondents.[93] Indeed, the proposed rule suggests not just a greater use, but a reliance on tax documentation as the primary evidence of residency in that the usual residence should be consistent with tax documents. While tax records are accurate documents containing well documented information, such data was not meant to be used for enumeration purposes. As detailed below, tax records may not align with the census enumeration period, and additionally may not reveal useful residence information, or any residence information at all.[94] Reliance on data from tax records as more than a mere tool to assist in identifying nonrespondents will create inaccuracies in the Census.

An IRS study from 1998, in arguing that tax documents were sufficiently accurate to be the foundation of an enumeration for the Census, found that the use of such documents were three percentage points less accurate.[95] Tax documents may not identify residential addresses, but may instead include post office boxes, accountant addresses, and business addresses.[96] Similarly, because people may have multiple tax forms pertaining to different addresses, the use of tax documents to identify a person's usual residence may be difficult as such documents in the aggregate could identify multiple residences with no information as to which is the usual address.[97]

Additionally, tax documentation may not be available in time to produce population estimates by the time apportionment data must be delivered to the President. In an administrative records experiment performed by the Census Bureau, the Bureau noted the importance of "timely access to individual administrative record data sources."[98] In that experiment, the lack of timely records meant the estimate could drop by 36.9%.[99] Requests for extensions, which allow people to file by October 15, greatly increase the likelihood of making large swaths of tax documents and other administrative records unavailable for use to deliver state-level population estimates.

This problem is exacerbated by the existence of people moving to different locations, regardless of whether they stay in a state or move to another state entirely.

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[92] PROPOSED RULE, *supra* note 1 at 57529 (to be codified at 15 C.F.R. § 60.2(a)).
[93] Amy O'Hara, Beth Jarosz, & Daniel Cork, Tax Records Are Critical Inputs to an Accurate Census. Failure to Test and Complement Them Could Derail the 2030 Census, GEORGETOWN UNIV. (Oct. 2026), https://georgetown.app.box.com/s/mh1kpammw07o6e85un6cr6m1olxnkaze.
[94] *Id.*
[95] PETER SAILER & MICHAEL WEBER, THE IRS POPULATION COUNT: AN UPDATE 4 (1998), https://www.irs.gov/pub/irs-soi/indpopct.pdf.
[96] *Id.*
[97] *Id.*
[98] DAVID BROWN, SAMUEL R. COHEN, GENEVIEVE DENOEUX, SUZANNE DORINSKI, MISTY L. HEGGENESS, CARL LIEBERMAN, LINDEN MCBRIDE, MARTA MURRAY-CLOSE, HONGXUN QIN, ALLEN E. ROSS, DANIELLE H. SANDLER, LAWRENCE WARREN, & MOISES YI, REAL-TIME 2020 ADMINISTRATIVE RECORD CENSUS SIMULATION xiv (May 5, 2023), https://www2.census.gov/programs-surveys/decennial/2020/program-management/evaluate-docs/EAE-2020-admin-records-experiment.pdf.
[99] *Id.*

Millions of people move in any given tax year.[100] Depending on when those people move and when they file, this can create skewed documentation that will provide inaccurate census data.

Using tax data will also hit certain areas and populations much harder than others. For example, for college towns, populations could drop drastically if there is overreliance on data from the IRS.[101] Because college students are often still dependents on their parents' tax documentation, using IRS data could, in some scenarios, lead to an undercount of as much as 40%.[102] That kind of undercount would be a massive shift in resources and political power from these towns, likely leaving some utterly devastated.

Similarly, reliance on tax and other administrative records could leave out children, part-time and seasonal employees, renters, and potentially some unhoused individuals. All these groups could be less likely to file taxes.[103] Such groups may not be employed or may simply not make enough money to file. Alternatively, they may be so mobile that they run into issues of having multiple residences from an administrative documents standpoint.[104]

Regardless of how one analyzes the use here, relying too heavily on tax documents and other administrative records risks dramatically undercounting people.

7. Removal of Race and Ethnicity Data Will Stymie Research and Weaken Antidiscrimination Law

The Census has tracked race and ethnicity since the 1790s.[105] The proposed rule would ban the gathering of that data.[106] Such a ban would seriously inhibit the ability for governments, academia, and researchers from doing longitudinal studies of where populations are located and where they are moving. This could greatly inhibit the provision of services as local governments in particular rely on granular census block data on race and ethnicity to determine not only where to target services but how to communicate about the delivery of services.[107]

Governments also use race and ethnicity data for the purposes of redistricting. Such data is necessary to ensure compliance with the Voting Rights Act and

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[100] *See* Barry Johnson, *Using Tax Records to Verify Residence Could Put 2030 Census Accuracy At Risk*, TAX POL'Y CTR. (Oct. 5, 2026), https://taxpolicycenter.org/taxvox/using-tax-records-verify-residence-could-put-2030-census-accuracy-risk (noting that 15,000,000 people moved between tax years 2022 and 2023).

[101] *Census IRS Rule Threatens College Town Representation*, NAT'L REDISTRICTING FOUND. (Oct. 16, 2026), https://redistrictingfoundation.org/policies/census-irs-rule-threatens-college-town-representation/.

[102] *Id.*

[103] *See* Dante Moreno, *A New Census Rule Could Reshape How Your Community Is Counted – Here's What to Know*, NAT'L LEAGUE OF CITIES (Sept. 28, 2026), https://www.nlc.org/article/2026/09/28/a-new-census-rule-could-reshape-how-your-community-is-counted-heres-what-to-know/.

[104] *See id.*

[105] *See, e.g.*, Beverly M. Pratt, Lindsay Hixson, & Nicholas A. Jones, *Measuring Race and Ethnicity Across the Decades, 1790–2010*, U.S. CENSUS BUREAU, https://www.census.gov/data-tools/demo/race/MREAD_1790_2010.html (last visited Oct. 24, 2026).

[106] PROPOSED RULE, *supra* note 1 at 57530 (to be codified at 15 C.F.R. § 70.2(a)).

[107] *See, e.g.*, *Why We Ask Questions About… Race*, U.S. CENSUS BUREAU, https://www.census.gov/acs/www/about/why-we-ask-each-question/race/ (last visited Oct. 24, 2026).

constitutional equal protection claims. Without data on race and ethnicity, it would be nearly impossible to challenge redistricting decisions that seem to dilute the votes of minority voters as census block-level data often served as the foundation of Voting Rights Act Section 2 claims.[108]

Failing to collect data on race and ethnicity will greatly hinder policymakers' ability to do their jobs. They will be far less able to target programs or efficiently allocate funding. Additionally, antidiscrimination laws such as the voting rights act will become substantially more difficult to enforce, leaving vulnerable populations disenfranchised and disempowered.

Conclusion

The Census Bureau's own analysis of the proposed rule is evidence enough of why it is a cruel and problematic proposal. We, the Council of the City of New York, are strongly opposed to this proposed rule. It will harm our city's residents for at least a decade. It will unduly deprive the City and State of New York of vital resources. It is also unjust and discriminatory and runs counter to our city's and our country's values and the purpose of conducting the census. We, as a legislative body representing over 8 million people, value the immigrants who make our City great. We urge you to do the same by abandoning this proposed rule.

Sincerely,

JULIE MENIN
Speaker

[108] *See* Drishti Pillai & Samantha Artiga, *Proposed Changes to Demographic Data Collection in the Census Could Impact Efforts to Address Health and Health Care Disparities*, KFF (Sept. 25, 2026), https://www.kff.org/racial-equity-and-health-policy/proposed-changes-to-demographic-data-collection-in-the-census-could-impact-efforts-to-address-health-and-health-care-disparities/.