

Daniel Sweeney
Deputy General Counsel for Economic, Statistical, and Regulatory Affairs
Office of the General Counsel
U.S. Department of Commerce
Washington, DC 20230

October 28, 2026

Re: Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions (Federal Register Notice Docket Number USBC-2026-0628)

Dear Mr. Sweeney:

We are writing on behalf of Dēmos to comment on the proposed rule “Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions” (Federal Register Notice Docket Number USBC-2026-0628, published September 10, 2026). We strongly oppose the proposed rule’s changes to the residence criteria and demographic items for the 2030 Census.

Dēmos is a national nonprofit, nonpartisan 501(c)(3) research, policy, and advocacy organization working to help build a just, inclusive, multiracial democracy and economy. For over 25 years, Dēmos has worked to create and advance policy solutions that build power for all Americans, especially Black and brown communities that often bear the brunt of political and economic suppression. Accurate and comprehensive census data, including race and ethnicity data, are vital to the work we do, as they enable us to study the impacts of economic and electoral policies on historically marginalized communities.

As an initial matter, the comment period provided in this instance is inadequate for the public to review and comment on this proposed rule given the gravity and extent of the intended changes. Under Executive Order 12866, significant proposed rulemakings like this one are typically afforded public comment periods of at least 60 days to ensure “meaningful opportunity to comment.” We support the initial extension from 33 days to 53 days but urge the Department of Commerce and the Census Bureau to extend the comment period further until December 10, 2026, to provide adequate, meaningful opportunity for public input.

Moreover, as explained below, we strongly oppose the proposed residence criteria and changes to demographic items. They are unconstitutional, unlawful, unprecedented, and untested. They will undermine the accuracy and usefulness of census data, with disastrous consequences for Americans’ political representation, access to critical resources, and well-being.

I. The proposed rule's exclusion of noncitizens without lawful permanent residence from census apportionment counts is flatly unconstitutional, and Congress has repeatedly rejected prior such attempts.

The Census Bureau proposes to exclude noncitizens without lawful permanent residence (LPR) from the census apportionment count for the first time since the census was codified 236 years ago.¹ This is unconstitutional. The proposed rule violates Section 2 of the Fourteenth Amendment, which states that “the whole number of *persons* in each state” must be counted for the apportionment of Congressional seats.² Noncitizens without LPR are still “persons.” Law and common sense establish that their immigration status does not change their status as “persons.” As the Supreme Court has held, “[a]liens, even aliens whose presence in this country is unlawful, have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.” *Plyler v. Doe*, 457 U.S. 202, 210 (1982); see also *Federation for Am. Imm. Reform v. Klutznick*, 486 F. Supp. 564, 576 (D.D.C. 1980) (arguments that Section 2 of the Fourteenth Amendment excludes noncitizens are “very weak on the merits” because, “while illegal aliens were not a component of the population at the time the Constitution was adopted, they are clearly ‘persons.’”).

Moreover, there is no legal basis for excluding noncitizens without LPR from the apportionment count even though they lack the full rights that citizens enjoy. In 2016, the U.S. Supreme Court rejected the notion that legislative districts must be drawn based on the total number of eligible voters rather than the total number of persons, explaining that, “[a]s the Framers of the Constitution and the Fourteenth Amendment comprehended, representatives serve all residents, not just those eligible or registered to vote.” *Evenwel v. Abbott*, 578 U.S. 54, 74 (2016) (internal citations omitted). This is because “[n]onvoters have an important stake in many policy debates—children, their parents, even their grandparents, for example, have a stake in a strong public-education system—and in receiving constituent services, such as help navigating public-benefits bureaucracies.” *Id.*

The Supreme Court has confirmed that including all inhabitants in the census apportionment count has been the intent since the founding of our country, when James Madison explained “that as the aggregate number of representatives allotted to the several states, is to be ... founded on the aggregate number of inhabitants.” *Id.* at 64–65 (citing *The Federalist* No. 54, p. 284 (G. Carey & J. McClellan eds. 2001)). The Census Bureau’s statement that noncitizens without LPR “are not true inhabitants, members of the body politic, or persons with a ‘usual residence’ in the United States due to their lack of a sufficient tie and allegiance to the United States”³ runs afoul of *Evenwel* and invents new

¹ Noncitizens have been included in every apportionment count since the 1790 Census Act. Brief of Amicus Curiae Historians in Support of Plaintiffs, *Common Cause v. Trump*, No. 20-cv-02023 (D.D.C. 2020), available at https://www.brennancenter.org/sites/default/files/2020-08/AmicusBrief_Historians_2020-08-26.pdf?inline=1.

² U.S. Const. amend. XIV, § 2 (emphasis added).

³ “Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions” (Federal Register Notice Docket Number USBC-2026-0628, published September 10, 2026).

standards. Noncitizens without LPR must be included in census apportionment counts by virtue of the fact that they are inhabitants of the U.S.

Congress has also considered and rejected proposals to exclude noncitizens from apportionment counts on numerous occasions.⁴ In the first instance, a “1929 Senate Legislative Counsel opinion analyzing such proposals concluded that ‘there is no constitutional authority for the enactment of legislation excluding aliens from enumeration for purposes of apportionment of Representatives among the States.’”⁵ In 1940, Representative Emanuel Celler of New York commented on a similar bill that failed by noting that “I cannot quarrel with the founding fathers. They said that all should be counted.... The only way we can exclude them would be to pass a constitutional amendment.” *City of San Jose, California v. Trump*, 497 F. Supp. 3d 680, 693 (N.D. Cal.), *vacated and remanded on other grounds*, 592 U.S. 1160 (2020). In the 1980s and 1990s, similar attempts to exclude noncitizens from apportionment accounts were also ultimately unsuccessful.⁶

In sum, there is no law or precedent that supports the proposal to exclude noncitizens without LPR from the apportionment count, and it violates the Constitution and prior Congressional intent.

II. The proposed rule will undermine the accuracy and usefulness of census data, to the detriment of all who live in the U.S.

The proposed rule contemplates major changes without adequate research and testing, even though the Census Bureau has long recognized that “[r]esearch underpins everything the Census Bureau does as the nation’s leading provider of quality data about its people, places and economy.”⁷ The Bureau has further recognized that “[t]esting is as central to what [the Bureau does] as research is” and “serves as a valuable tool to ensure that [the Bureau is] on the right track.”⁸ Moreover, as explained below, the existing evidence to date demonstrates that the proposed changes will actually make census counts less accurate and less useful. In turn, poor census data quality will weaken Americans’ political representation, deprive them of critical resources, and undermine their well-being.

⁴ Congressional Research Service, “Constitutionality of Excluding Aliens from the Census for Apportionment and Redistricting Purposes,” 2012, <https://www.everycrsreport.com/reports/R41048.html>.

⁵ Congressional Research Service, “Constitutionality of Excluding Aliens from the Census for Apportionment and Redistricting Purposes,” 2012, <https://www.everycrsreport.com/reports/R41048.html>.

⁶ Congressional Research Service, “Constitutionality of Excluding Aliens from the Census for Apportionment and Redistricting Purposes,” 2012, <https://www.everycrsreport.com/reports/R41048.html>.

⁷ Deborah Stempowski, “How the Census Bureau Is Optimizing Its Research and Testing Strategy for the 2030 Census,” U.S. Census Bureau, July 27, 2023, <https://www.census.gov/newsroom/blogs/random-samplings/2023/07/research-testing-strategy-2030-census.html>.

⁸ *Ibid.*

a. The proposed changes will reduce census accuracy.

The federal government is constitutionally required to conduct an “actual enumeration” of the population,⁹ but the proposed rule runs afoul of this mandate by introducing many opportunities for error in at least three respects.

Firstly, excluding noncitizens without LPR from the apportionment count will lead to an inaccurate enumeration because it will be impossible to comprehensively and accurately determine all census respondents’ citizenship status. The Census Bureau has not adequately tested the addition of a citizenship question on the census, but available research to date shows that adding such a question would depress response rates and reduce accuracy, particularly in already hard-to-count populations (such as low income populations, racial and ethnic minorities, and undocumented immigrants) and historically undercounted populations (such as the Black, American Indian and Alaska Native, and Hispanic/Latino populations).¹⁰ A Census Bureau randomized test of a citizenship question in 2019 found significantly lower response rates in census tracts that had noncitizen populations of 4.9 percent or higher and Hispanic populations of 49.1 percent or higher.¹¹ A paper written by Census Bureau staff from 2019 found evidence that such a question would “lower self-response rates in households potentially containing noncitizens, resulting in higher fieldwork costs and a lower-quality population count.”¹²

The Census Bureau’s proposal to use administrative records to determine citizenship for purposes of the census is equally problematic, as such records are incomplete and rely on sources such as Department of Homeland Security data and Social Security Administration data, which themselves are not fully up to date.¹³ A Migration Policy Institute study found that under a similar plan to exclude noncitizens from 2020 congressional apportionment data (which was ultimately not successful), up to 20 million U.S. citizens could have been incorrectly excluded because of errors when matching census responses to administrative records.¹⁴ The study also noted that matching errors using administrative

⁹ U.S. Const. amend. I, § 2, cl. 3.

¹⁰ See Deborah Stempowski, “Counting Every Voice: Understanding Hard-to-Count and Historically Undercounted Populations,” U.S. Census Bureau, Nov. 7, 2023, <https://www.census.gov/newsroom/blogs/random-samplings/2023/10/understanding-undercounted-populations.html>.

¹¹ Elizabeth A. Poehler et al., “2019 Census Test Report,” U.S. Census Bureau, reissued January 3, 2020, ix, <https://www2.census.gov/programs-surveys/decennial/2020/program-management/census-tests/2019/2019-census-test-report.pdf>. A statistically significant impact was not measured when the data was aggregated nationally—at that level, impacts on specific populations are masked.

¹² J. David Brown et al., “Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census,” U.S. Census Bureau, June 2019, <https://www2.census.gov/ces/wp/2018/CES-WP-18-38R.pdf>.

¹³ Kathleen Romig, “Trump Administration’s Legally Dubious Misuse of Social Security Data Risks Disenfranchising Eligible Voters,” Center on Budget and Policy Priorities, Dec. 9, 2025, <https://www.cbpp.org/blog/trump-administrations-legally-dubious-misuse-of-social-security-data-risks-disenfranchising>.

¹⁴ Randy Capps et al., “Millions of U.S. Citizens Could Be Excluded under Trump Plan to Remove Unauthorized Immigrants from Census Data,” Migration Policy Institute, July 2020, <https://www.migrationpolicy.org/commentary/millions-us-citizens-could-be-excluded-under-trump-plan-remove-unauthorized-immigrants>.

data are “likely to be greater in low-income urban and rural communities, thereby exacerbating any undercount that may occur in those communities and reducing their voting power relative to more affluent communities.”¹⁵ The Census Bureau’s own research has found that administrative records “may miss some naturalizations and capture others with a delay.”¹⁶

The Census Bureau’s statement that it “now has access to substantially more information than it did when it conducted the 2020 Census” and that it has a “highly-advanced data linkage infrastructure”¹⁷ does nothing to address the fact that the underlying records they are obtaining are not sufficiently up to date. The Census Bureau has not identified a method by which noncitizens without LPR could be identified accurately, and the consequences for historically marginalized communities are particularly serious.

Secondly, the proposed rule’s attempt to redefine a person’s “usual residence” is also unprecedented and untested. The new requirement that residence be based on tax records, rather than where people actually live, and to be based on their “lawful” residence, will introduce more error. The Census Bureau has itself recently recognized that “usual residence” is “not always the same as a person’s legal residence, voting residence, or where they prefer to be counted.”¹⁸ Tax records are ill-equipped to determine usual residence as they often reflect the most reliable place for a person to get mail rather than where they actually live. Moreover, the proposed rule is not clear as to how the new requirement of “lawful” residence will be determined or what laws that requirement will be based on, which will cause confusion and invite inconsistency in implementation.

Relatedly, the proposal for a new three-month “census enumeration period” violates federal law, which plainly states that the Secretary of Commerce must “in the year 1980 and every 10 years thereafter, take a decennial census of population *as of the first day* of April of such year.”¹⁹ This language clearly prevents the use of a range of dates for enumeration. The Bureau’s new proposed criteria are confusing, harder to implement, and will introduce more error, as some people will inevitably move during the enumeration period. In particular, these changes will increase the risk that some groups with more variable living situations, such as seasonal workers, foster youth, people with second homes, and shelter residents, will be missed, compounding inaccuracies.

Thirdly, the proposed rule’s bar on questions about sexual orientation will unnecessarily restrict future data collection efforts. The census does not currently have a stand-alone question about sexual

¹⁵ Ibid.

¹⁶ J. David Brown, “Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census,” U.S. Census Bureau, June 2019, <https://www2.census.gov/ces/wp/2018/CES-WP-18-38R.pdf>.

¹⁷ “Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions” (Federal Register Notice Docket Number USBC-2026-0628, published September 10, 2026).

¹⁸ U.S. Census Bureau, “Residence Criteria and Residence Situations for the 2020 Census of the United States,” February 2018, <https://www.census.gov/content/dam/Census/programs-surveys/decennial/2020-census/2020-Census-Residence-Criteria.pdf>.

¹⁹ 13 U.S.C. § 141(a) (emphasis added).

orientation, so the proposed rule's prohibition of questions about sexual orientation will do nothing other than needlessly hamstring future data collection efforts, no matter what needs could later emerge. Again, this proposal has not been accompanied by thoughtful and rigorous testing, nor have appropriate agencies, impacted communities, or subject matter experts been consulted about such changes.

b. Reduced accuracy of the census will cause serious political and economic ramifications for all who live in the U.S.

Inaccurate census counts will have profound political and economic consequences. Regarding political ramifications, excluding noncitizens who lack LPR from the apportionment count will deprive not only those noncitizens of political representation, but will result in diminished political representation of citizens and noncitizens alike. To explain how this works: Accurate census numbers are central to the allocation of congressional seats across the states and are essential for state and local governments to create constitutionally- and statutorily-compliant legislative districts. As stated earlier, the Supreme Court recognized in *Evenwel* that elected officials serve their entire districts, not just those who voted for them, and that both voters and nonvoters have a stake in the political decisions that affect their lives. So when a community has fewer Congressional seats than its population requires, everyone in that community, including citizens, suffers from diminished representation. As a result, the exclusion of millions of noncitizens from apportionment counts infringes on everyone's right to a representative government.²⁰

Inaccurate census data will also directly translate into economic harm. As explained above, in attempting to identify and exclude noncitizens without LPR, the proposed rule will discourage noncitizens' participation and undermine the accuracy of the census. Census counts are used to allocate trillions of federal dollars that are deployed through hundreds of federal assistance programs such as Medicaid, SNAP, highway funds, and school lunches.²¹ An inaccurate census count will only serve to decrease funding for services for a population size that has not otherwise changed. Entire communities, citizen and noncitizen alike, will be harmed by reduced budgets for things like emergency rooms, classrooms, and roads. Fewer resources will be divided among the population, meaning that even those who are counted will receive less than they are entitled to.

The lessened accuracy of census data will compound harms at all levels of government. Local, state, and tribal governments use census data to plan for their communities' needs regarding emergency response, healthcare, education, and similar services. The federal government uses census

²⁰ See, e.g., *Duncan v. McCall*, 139 U.S. 449, 461 (1891) ("By the constitution, a republican form of government is guarantied [sic] to every state in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves.").

²¹ Ceci Villa Ross, "Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021," U.S. Census Bureau, June 2023, <https://www.census.gov/library/working-papers/2023/dec/census-data-federal-funds.html>.

data “to monitor and assess whether federal programs are functioning as designed, to encourage effective administration of federal programs, and to explore alternative approaches to distributing the funds as necessary.”²² The ripple effects on programs that are designed to serve people and improve quality of life will be devastating.

c. The elimination of census race and ethnicity data collection will severely diminish the usefulness of census data and violates existing federal antidiscrimination statutes.

The proposal to remove questions about race and ethnicity from the census also departs from 236 years of practice and will severely diminish the usefulness of census data. Demographic data collected by the census are vital to improving quality of life for all Americans, as they are used to assess health outcomes, to identify inequities in economic opportunities, and to enforce voter protections and civil rights laws, among other purposes. Moreover, Census race and ethnicity data are the backbone of countless *other* data collection and research initiatives in the public and private sectors, providing the population baseline to measure communities, needs, and outcomes.

The Census Bureau cites to non-binding language from a few recent Supreme Court cases and to a recent executive order for the proposition that there are “[s]ubstantial doubts about the meaning, significance, and impact of attempting to categorize persons by race and ethnicity.”²³ Support for that proposition is lacking, but in any event, such reasoning simply does not change the fact that stark disparities exist across racial and other demographic groups when it comes to quality of life and access to resources.²⁴ We need data to study, understand, and address such inequities.

Nor is the Census Bureau’s cited privacy concern a valid justification for the removal of questions concerning race and ethnicity. The Bureau already protected people’s privacy in 2020 census data through differential privacy, a carefully calibrated statistical method that satisfies its obligations under 13 U.S.C. § 9(a)(2). To the extent the Bureau believes that there is still a privacy risk, it must work to further improve its safeguards, not to stop collecting race and ethnicity data altogether. This is particularly so because there is no evidence that race and ethnicity data are more likely to compromise privacy as opposed to any other demographic data that the Bureau still plans to collect as part of its duties to conduct an “actual enumeration” of the population.

In fact, the proposed changes violate the multiple federal statutes that require race and ethnicity data to be enforced. Without race and ethnicity data, enforcement and implementation of

²² Taylor R. Knoedl, “The U.S. Census Bureau: An Overview,” Congressional Research Service, Nov. 22, 2023, https://www.congress.gov/crs_external_products/R/PDF/R47847/R47847.1.pdf.

²³ “Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Questions” (Federal Register Notice Docket Number USBC-2026-0628, published September 10, 2026).

²⁴ See, e.g., Addo, Fenaba R. et al., “Setting the Record Straight on Racial Wealth Inequality,” AEA Papers and Proceedings, 114: 169-73 (2024), <https://doi.org/10.1257/pandp.20241102>; Center for American Progress, “Health Disparities by Race and Ethnicity,” May 7, 2020, <https://www.americanprogress.org/article/health-disparities-race-ethnicity/>; Kevin T. Morris and Coryn Grange, “Growing Racial Disparities in Voter Turnout, 2008–2022,” Brennan Center for Justice, March 2, 2024, <https://www.brennancenter.org/our-work/research-reports/growing-racial-disparities-voter-turnout-2008-2022>.

statutes like the Fair Housing Act (barring discrimination in housing), Title VI of the Civil Rights Act of 1964 (barring discrimination in sectors like education for recipients of federal financial assistance), Title VII of the Civil Rights Act of 1964 (barring discrimination in the workplace) and the Voting Rights Act of 1965 (barring discrimination in voting practices and procedures), will be impossible. Stopping the collection of race and ethnicity data does not stop discrimination and inequity—it condones them.

* * *

This sweeping proposal is untested, unprecedented, and unlawful. It will make census data less accurate and less useful. And it will undermine political representation, proper distribution of resources, efforts to study and ameliorate inequity, and the ability to enforce many anti-discrimination laws. For these reasons, we strongly oppose the changes proposed in this rule and urge the Census Bureau and Department of Commerce to immediately rescind it.

Thank you for considering our comment.

Sincerely,

Neda Khoshkhoo
Director of Democracy
Dēmos

Taifa Smith Butler
President
Dēmos

Lydia Casmier Anway
Director of Economic Justice
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