

ENUMERATION OR ESTIMATION:  
WHY INACCURATE CENSUS RESULTS HURT  
AMERICAN CITIZENS

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HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION AND  
LIMITED GOVERNMENT

OF THE

COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED NINETEENTH CONGRESS

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**ENUMERATION OR ESTIMATION:  
WHY INACCURATE CENSUS RESULTS HURT  
AMERICAN CITIZENS**

Wednesday, November 19, 2025

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON THE CONSTITUTION AND LIMITED GOVERNMENT

COMMITTEE ON THE JUDICIARY

*Washington, DC*

The Committee met, pursuant to notice, at 10 a.m., in Room 2141, Rayburn House Office Building, the Hon. Chip Roy [Chair of the Subcommittee] presiding.

*Members present:* Representatives Roy, Jordan, McClintock, Hageman, Hunt, Grothman, Harris, Onder, Gill, Scanlon, Raskin, Jayapal, Balint, and Kamlager-Dove.

Mr. ROY. The Subcommittee will come to order. Without objection, the Chair is authorized to declare a recess at any time. We welcome everyone to today's hearing on the accuracy of the census.

I will now recognize myself for an opening statement. There will be some different conclusions and perspectives as there always are, but I do think there are some areas here where we can all agree that there are ways to improve the census process and I do how we will be able to have conversations along those lines where there can be some bipartisan agreement, that there are things we might be able to do better for future census activities.

Look, it is one of the Constitution's simplest commands. Article 1, Section 2 states that an actual enumeration of the American people shall be conducted every 10 years. The decennial census of Americans, though it sounds mundane, is a core pillar of our democracy. It determines how many people represent each State in Congress, how many electoral votes each State gets in our Presidential election, informs the drawing of district lines for State and Federal offices, and affects how much money each State receives from the Federal Government. Simply put, it is important that the Census Bureau gets the count right, and in 2020, it seems that it failed. Indeed, the 2020 Census should be called the Sanctuary Census. Just like sanctuary jurisdictions, the 2020 Census unconstitutionally put illegal aliens ahead of American citizens. Under Section 2 of the 14th Amendment, known as the Apportionment Clause, the census must count "the whole number of persons in each State."

At the time of the amendment's ratification, the term persons were understood to refer to only members of the American political communities, citizens, and permanent resident aliens who have been lawfully admitted to the country. Just as the Supreme Court has held that jurisdiction in the 14th Amendment means, "not merely subject in some respect or degree to the jurisdiction of the United States, but completely subject to their political jurisdiction and owing them direct and immediate allegiance," when determining who is a U.S. citizen who is born to illegal alien parents.

Indeed, the Supreme Court has recognized a similar principle, noting that in 1992 the constitutional language governing the census contemplates more than mere physical presence and some element of allegiance or enduring tie to a place. It is unthinkable that the 14th Amendment's Framers sought to reward states that harbored illegal aliens with additional Congressional representation. Yet, that is exactly what happens now.

After the 2020 Census, States with more illegal aliens often because of a conscious policy choice to hamper Federal law enforcement and welcome immigration law breakers, get more seats in Congress, more electoral votes, and more of your Federal tax dollars. A lot of them, in fact. A leading study found that if Congressional seats were properly apportioned based on the number of citizens, Republican States would gain between 10–12 seats in the House of Representatives and votes in the Electoral College. That is right. Illegal aliens and noncitizens have at last ten seats in the U.S. House of Representatives and the Electoral College and that was before the Biden Administration policies welcomed ten million illegal aliens into our country, during his disastrous four years. How many more seats will that give Democrats in the 2030 Census if nothing changes?

The counting of illegal aliens in the census and as part of the apportionment base also violates the core constitutional principle of one person, one vote. The Supreme Court has repeatedly held that State and Federal legislative districts must be roughly equal in population so that each citizen's vote is roughly equal in power. The 2020 Census undermined this principle by counting illegal aliens in the apportionment base. Today, a voter in a Congressional district with 730,000 citizen residents and 30,000 illegal aliens has a stronger say in the election of a representative than a voter in a Congressional district with 760,000 citizens and no illegal immigrants. Shockingly though, the problems of the 2020 Census did not stop there.

Beyond the manifest unconstitutionality of including the illegal aliens, the Census Bureau failed at its simplest task, accurately counting the legal population of the United States. The Census Bureau's own after-action report found that it significantly undercounted the population of six States, five of which including my home State of Texas, are predominantly Republican. In fact, in addition to Texas losing its seat, Florida lost out on two additional seats. Colorado gained a seat that it did not deserve and Minnesota and Rhode each maintained a Congressional seat that should have been lost. Conversely, the Census Bureau found that it overcounted in eight States, Seven of which are predominantly Democratic. Estimates showed that these errors which were unprecedented in

the recent history of the census cost Republicans six seats in the House, six seats, just from miscounting, and that is on top of the 10–12 extra seats Democrats have from counting illegal aliens.

What is more, because the Census Bureau used a technique called differential privacy to scramble the data underlying the 2020 Census, these errors are impossible to correct without an entirely new census. We have witnesses here today who can explain the technicalities. As our witnesses will highlight, the practice of differential privacy was derided by outside groups across the political and ideological spectrum, calling for the use of it to end. In fact, a 2021 Harvard study on differential privacy's effects on redistricting noted that, "The DAS has a tendency to transfer population across geographies in ways that artificially reduce racial and partisan heterogeneity....," which makes it impossible to follow the principle of one person, one vote, as it is currently interpreted by courts and policymakers. Together then, the 2020 Sanctuary Census denied Republicans 18 seats in the U.S. House, 12 by counting illegal aliens, and another six by counting inaccurately. More importantly, it cost law-abiding citizens in States across the U.S. their equal say in Congress and in the Presidential elections.

Congress must act to ensure that at the very least that illegal aliens are not counted for the purposes of apportionment. Let's follow the Constitution. Let's stop enabling policies and encourage illegal immigration. Let's stop weaponizing the census for political gain and let's find bipartisan ways to improve the census and let's understand the technicalities that we are going to hear about today that we think have bipartisan agreement, create problems in terms of the estimating procedures that are used in census, and let's put the American people first. The people's house, the Electoral College, and all the elections and policies that flow from that should be representative of the American people.

I now recognize the Ranking Member, Ms. Scanlon, for her opening statement.

Ms. SCANLON. Good morning and thank you to all our witnesses for being here. I look forward to hearing from you.

As our Founders recognized, the census is fundamental to our democracy playing a critical role not just in governance, but in shaping decisions made by organizations and institutions across American life. An accurate census is essential for a fair distribution of political power here in Congress and for the equitable allocation of billions of dollars of Federal funds to States and communities including some programs like Medicaid, free and reduced school lunches, Head Start, and SNAP. Its data is used by businesses and nonprofits to determine where and how to operate and by State and local governments to decide where to invest in public infrastructure like roads and hospitals and schools.

The census is not just some mathematical equation to distribute Congressional seats and taxpayer dollars. It is deeply rooted in our Founders' vision of what a government by and for the people should be. Alexander Hamilton is on record saying during the Constitutional Convention in Philadelphia,

There can be no truer principle than this—that every individual of the community at large has an equal right to the protection of the government.

Ultimately, the census is a national snapshot we take every 10 years that helps us understand and define who we are, how to govern, and undermining that process in ways that distort that picture will harm all us. That is why Democratic and Republican administrations alike have historically tried to protect the census from political interference and partisan pressures. This President and his MAGA allies are deviating from that precedent, once again trying to rig things in their favor. Now, these efforts are not new. They began under the first administration when they tried to add an unprecedented citizen question to the census. This was a blatant attempt by political appointees to exclude noncitizens from our count which they expected to “benefit Republicans and non-Hispanic Whites,” and which was ultimately rejected by the Supreme Court. Those efforts continued with the development of the Right-wing Project 2025 manifesto which, as predicted, has become a playbook for the Trump Administration. It devotes a whole section to plans to appoint political appointees loyal to the White House to lead the census “to execute a conservative agenda” which includes trying to add a citizenship question again, focusing census engagement on conservative groups and limiting efforts to engage historically marginalized and under counted groups.

Then, earlier this year, President Trump reinstated a memo to the Commerce Department ordering that the census not count undocumented immigrants when determining each States’ share of Congressional seats. We just heard a little bit of that rationale which really conflates the idea of who is in this country legally, not legally. I mean we constantly hear from our colleagues here about illegal aliens not understanding that fully 44 percent of immigrants are citizens, that another 26 percent are legal permanent residents, that another five percent are here on visas, so the vast majority of the immigrants in our country are, in fact, here legally as opposed to the constant refrain we hear from the other side of the aisle. At any rate, the Constitution’s command is that the “whole number of persons be counted.”

The President has also posted on his social media that he wants his administration to start work on a new census and in a common theme of this administration, it blatantly ignores the fact that the Constitution gives Congress, not the President, the authority to conduct the census. Our Constitution’s Framers understood the importance of having an accurate and comprehensive population count that is reflected in the fact that Article 1, Section 2, Clause 3, the Enumeration Clause, mandates that representatives be apportioned among the States according to the whole number of persons in each State using an actual enumeration.

Later, the drafters of the 14th Amendment kept this phrasing while amending the clause to account for the end of slavery, reiterating that a State’s representation in Congress must be determined by counting the whole number of persons in each State. It really could not be clearer, the census must count the whole number of persons, not just a subset of persons, living in the U.S. The Constitution’s drafters could have used a narrower term like citizens or voters or something else, which they did, for example, in other parts of the 14th Amendment, but they purposely used the broader term persons in the Apportionment Provision, making it

clear that all people count, including women, who could not yet vote at the time of that drafting, children, indentured servants, who were often immigrants, and former slaves, and they rejected proposals that would restrict the census to voters.

Additionally, the requirement of actual enumeration has never meant that census takers are only required to count only those who they can reach directly or in person. We know that the effort to count every person every decade has never been perfect and that is why there have been continual improvements over time, and that is for a variety of reasons, chief among them being that certain populations are difficult for census takers to reach. Renters are harder to reach than homeowners. Children are particularly tough to reach, especially if they are not reading and writing yet. The Constitution does account for this. The Supreme Court made clear in *Utah v. Evans* that the Constitution does not specify exactly how the census should be counted. As the Court noted in that case, census takers implementing our very first count in the late 1700s were only required to report the names of household heads which are very different from our system now.

Our Framers knew better than to try and anticipate the technology or methodology that America would need to conduct the count in the future, one that must capture the hundreds of millions of people living in the country today. Instead, the constitutional *North Star* they gave us for the census is simply that it be accurate. These on-going efforts to cast doubts about the results of the 2020 Census, a census that was conducted, I might add, while Donald Trump was President, a part of a larger scheme, one MAGA extremists have designed to redraw maps mid-decade in a blatant power grab, so that Republicans can win more seats in Congress and keep the Majority despite the increasing unpopularity of their Project 2025 agenda. In effect, they are seeking a pregerrymander even as they attempt other gerrymanders.

The ongoing lawsuit in Florida which seeks to overturn the 2020 Census by challenging some of its counting methodologies fits right into this scheme. The suit filed against the Trump Administration that is presumably sympathetic to the plaintiffs may be just the pretext this administration is looking for to push for a census redo. If their efforts succeed, Americans will suffer.

Under counts and other counting errors, particularly hurt vulnerable and hard-to-reach populations including young children, racial and ethnic minorities, the transient and homeless, those in non-traditional housing arrangements, and those living in very rural or very dense urban communities. In other words, people living in America who patronize its businesses, drive on its roads, attend its schools and use its essential public services, and people who we need to have included in the count. If these lawsuits by plaintiffs get their way, and the methods used to account for these populations are prohibited or limited, essentially putting the Federal Government's head in the sand, will only move farther away from, not closer to an accurate and complete count. Federal funds will be misdirected. States, local governments, businesses, nonprofits, and others will make less-informed decisions, inadvertently depriving people of what they need to live and thrive in our communities and that is devastating for millions.

Of course, we all want, as the Chair suggests, our census picture to be fuller and more accurate. It is what our democracy demands, and we should all strive to improve our data collection and prevent under counting as we look forward to the scheduled, regular 2030 Census. To make that a reality, we should be talking about reforms that limit the Executive Branch's ability to interfere in the count for political purposes or reforms to ensure that the Census Bureau has adequate funding and flexibility to do the job right. We should not try to curtail or ignore scientific methods which are available to complete such a huge undertaking or consider changes that make people trust this process less, rather than participating in it more.

The census and its results are too consequential for that, so I look forward to hearing our discussion today and I yield back.

Mr. ROY. I thank the Ranking Member, and I will now recognize the Ranking Member of the Full Committee, Mr. Raskin.

Mr. RASKIN. Thank you, Mr. Roy. I appreciate it. The call for a census in Article 1 of the Constitution plays an essential role in our democracy, guaranteeing for centuries that there will be an appropriate allocation of House seats and districts of equal population within each State.

President Trump's extraordinary mid-decade partisan gerrymander offensive has hit major roadblocks recently in California, in Utah, and in Federal Court in Texas, but his forces have continued on their path of destruction and are now targeting the 2020 Census itself as a way to tear up the political map of the country.

This week, President Trump released this telltale statement on social media. This all began with the rigged census he said. We must keep the Majority at all costs. Republicans must fight back.

What a syllogism we are offered because Trump must keep the Majority at all costs, therefore, the 2020 Census was rigged. This is lunacy. It is like saying because Trump had to win the 2020 election, he really wanted to win it, therefore the election was rigged and he won it. That is just derangement.

The 2020 Census was not rigged. A 2024 report by the Government Accountability Office reviewing the accuracy of the census found that the accuracy of the 2020 national population count was consistent with the previous census. While the Bureau's Post-Enumeration Survey estimated significant net coverage errors in certain regions and States, the accuracy of the count was overall consistent and over counts and under counts of the margins are nothing new. The census was not rigged.

The actual institutional weakness of the census, as the GAO reported, is the chronic under counts of communities of color which persisted through the 2020 Census. In 2020 and 2010, "Black or African American and Hispanic persons, young children, and renters, were systematically under counted while non-Hispanic White persons, adults over 50, and homeowners were over counted." Are we going to have a hearing planned on that? Maybe on the same day we are going to have a hearing with the Epstein victims. I do not know.

The Census Bureau faced unprecedented challenges in conducting the 2020 Census because of the raging global pandemic and the Government's inadequate response to it. COVID-19 signifi-

cantly complicated census activities, many of which were suspended or delayed. In many States and localities, lockdowns, and travel restrictions stopped the Census Bureau from accessing communities entirely. The Bureau also had to contend with national disasters in a number of States, as well as a planning budget that had been dramatically cut in the first Trump Administration. These two are the real problems that we should be discussing today. Instead, we seem to be wasting our time on a long list of fanciful, self-pleading theories that have no basis in law or history, and they fly in the plain text of the Constitution.

Before we assign blame for any actual or imagined inaccuracies in the results of the 2020 Census, let it be clear that it was the first Trump Administration that was responsible for preparing the 2020 Census and the greatest obstacle to an accurate 2020 Census count was President Trump himself. He repeatedly sought to undermine the accuracy of the count by adding a citizenship question which experts warned would dramatically depress participation including by American citizens and skew the results for Democratic and Republican States alike. Thank goodness that the Roberts court thwarted that when it found that Trump's process is completely contrary to law and the President's pretext for adding the blatantly political citizenship question was "contrived."

The Trump Administration told the court that they needed citizen questions to help enforce the Voting Rights Act and then after oral argument, the evidence came to light indicating that the request of the administration, a GOP redistricting expert, had provided an analysis showing that the addition of the citizenship question to the census and the use of citizen-only data for redistricting would politically benefit Republican and the White community. The Supreme Court found the administration's formal excuses completely unbelievable, calling them contrived.

Now, in his second term, Trump and his allies are once again seeking to weaponize the census in an unlawful way and undermining its accuracy. Trump instructed the Commerce Department to exclude undocumented immigrants from the census count, a policy that one three-judge panel said, "has already been rejected by the Constitution, the applicable statutes in 230 years of our history."

The Constitution makes clear that the census includes, "the whole number of persons in each State to ensure a complete picture of who resides in the country." As Republican Senator Jacob Howard of Michigan stated during his introduction of the 14th Amendment in 1866, "the basis of representation is numbers. That is the whole population, numbers, not voters; numbers, not property. That is the theory of our Constitution."

In the face of this overwhelming textural and historical evidence telling us that every person must be counted, some State officials have filed meritless lawsuits against the Commerce Department challenging the constitutionality of the Census Bureau's long-standing, constitutionally mandated practice to count all persons who reside within the U.S. regardless of their citizenship status. Right-wing, MAGA activists in Florida have also filed suit against the Commerce Department claiming that the census' use of group quarters count imputations and differential privacy violated the

Constitution in the Census Act and called the accuracy of the census in this question.

Do not let the jargon or these tortured arguments fool you. The lawsuits are part of a coordinated strategy to give coverage to this mid-decade attack on the 2020 Census' apportionment count ahead of the midterms. Our democracy and our society cannot afford our constitutional census being turned into a constant instrument of partisan conflict, division, and advantage. Let's reject this dangerous direction.

Mr. Chair, I yield back to you.

Mr. ROY. Well, I thank the Ranking Member. Without recognizing—Mr. Jordan is not here, without objection all other opening statements will be included in the record. We will now introduce today's witnesses.

We will start with Mr. Mayfield. Mr. Mayfield is a member at Chalmers, Adams, Backer & Kaufman, where his practice includes complex commercial litigation, constitutional law, and administrative law. Prior to that, Mr. Mayfield was a partner in a boutique litigation firm, an Assistant United States Attorney, and served as Counsel to the Director of the United States Census Bureau.

Next, Mr. Jay Rodriguez. Mr. Rodriguez is an Assistant Attorney General in the Office of the Kansas Attorney General. He primarily works on cases involving constitutional issues and was the attorney of record on behalf of the Kansas Attorney General in Louisiana versus Department of Commerce.

Mr. Wade Miller. Mr. Miller currently serves as a Senior Advisor at the Center for Renewing America. Wade is a combat veteran who served in the United States Marine Corps as an infantryman deploying in combat theaters three times in Iraq and the Horn of Africa. He has significant experience and involvement in campaign activities, conservative grass roots movement and the public-policy development and for the record, he also served in my office in my first term in Congress as my Chief of Staff.

Mr. Yang. Mr. Yang is the President and Executive Director at Asian Americans Advancing Justice. AAJC works to eliminate discrimination against and to advance the civil rights of Asian Americans.

We thank our witnesses for appearing today and we will begin by swearing you in. Would you please rise and raise your right hand? Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief so help you God?

The witnesses answered in the affirmative. Let the record reflect that they have. Thank you. Please be seated. Please know that your written testimony will be entered into the record in its entirety. Accordingly, we ask that you summarize your testimony in five minutes.

I am going to start on the right here with Mr. Mayfield. You have five minutes and you may begin.

#### **STATEMENT OF TREY MAYFIELD**

Mr. MAYFIELD. Thank you, Chair Roy, Ranking Member Scanlon, and the Members of the Committee for inviting me here today to discuss issues related to the 2020 Census. My name is Trey

Mayfield and I served as Counsel to the Director of the Census Bureau at the end of the first Trump Administration during which time many legal issues concerning the methodology, accuracy, and use of the 2020 Census were raised.

Our Constitution is largely concerned with structuring our form of government and placing textural limits on power. The decennial census is one of the very few specific exercises of power mandated by the Constitution. The census clause is firmly lodged in Article 1 of the Constitution. It is, for constitutional purposes, a Congressional responsibility. To apportion Members of the House of Representatives among the several States so that House membership proportionally reflects each State's population, Article 1, Section 2, Clause 3 mandates that there be "an actual enumeration" every 10 years. Section 2 of the 14th Amendment reiterates that requirement.

When interpreting the Constitution, we must look to its text, using the commonly understood meaning of the words at the time it was ratified in 1788. The Constitution requires the actual enumeration. Not surprisingly dictionaries from the time demonstrate that enumeration requires an actual counting and not just an estimation of numbers. The Founders were well aware of the opportunities for fraud to inflate or deflate a given State's population to alter representation in the House. For that reason, the Federal Government was charged with conducting the census and doing so by actually counting, not estimating, how many people were living in the United States.

Since 1790, Congress has consistently reaffirmed in census-authorizing legislation that statistical adjustments are prohibited in determining our national population for apportionment purposes. To be sure, since this data is used for many purposes other than apportionment including dispersing Federal funds to States and localities, obtaining demographic data and ascertaining the State of the Nation in such ways as the Congress and President deem appropriate. Some kinds of statistical adjustment are permissible in performing those functions, but not for enumeration.

Congress has mandated the census "be as accurate as possible" and banned the use of statistical adjustments for enumeration because it "poses the risk of an inaccurate, invalid, and unconstitutional census." Within those limitations, Congress has delegated responsibility for implementing the census to the Secretary of Commerce and the Census Bureau. Congress also requires the President to report to Congress the total population of the Nation, each State, and the number of representatives to which each State is entitled. There is no law, however, prohibiting the President from reporting additional information to Congress in that report such as the number of illegal aliens in the count and what the results of the count would be in their absence.

Congress has also prohibited the release of any census data whereby the person who provided the data could be identified. Purportedly to meet this requirement, civil servants at the Bureau apply the methodology to the 2020 Census called differential privacy. It violates the Constitution's actual enumeration requirement and the Congressional prohibition on the use of such methods. They refused to allow their method to be peer reviewed or to dis-

close the data on which they concluded the differential privacy was needed instead of the method the Bureau had previously used known as data swapping.

Using differential privacy altered both the count and the characteristics of individuals and households reported at the region, district, town, and census block level. In essence, the Bureau's reported population moved people around within States. For instance, when testing differential privacy using the data from the 2010 Census, the population of Port Royal, Virginia was artificially increased 87 percent while the population of Stony Creek, Virginia, was decreased by 43 percent. In other words, differential privacy results in people from larger subgroups and geographic units being moved to smaller ones.

Opposition to differential privacy was unanimous among census stakeholders. Every letter the Bureau received from outside scientists and statisticians came to the same conclusion: Differential privacy is illegal, it is data corrupting, and it addresses a non-existent problem. It was also opposed unanimously by governmental actors and interest groups for reasons as straight forward that using fake population data makes it difficult for governments to carry out core responsibilities such as drawing district lines and determining where to locate bus stops and schools and how to allocate welfare.

Studies since the 2020 Census have confirmed that this is exactly what differential privacy does. It adds fake people where they do not live and subtracts real people from where they do live. Thus, all the reported enumeration census data from 2020 below the State level is false.

I welcome the Committee's questions.

[The prepared statement of Mr. Mayfield follows:]

**CONGRESSIONAL TESTIMONY OF TREY MAYFIELD  
BEFORE THE SUBCOMMITTEE ON THE CONSTITUTION & LIMITED  
GOVERNMENT OF THE COMMITTEE ON THE JUDICIARY**

**“ENUMERATION OR ESTIMATION:  
WHY INACCURATE CENSUS RESULTS HURT AMERICAN CITIZENS”**

**NOVEMBER 19, 2025**

Thank you Chairman Roy, Ranking Member Scanlon, and Members of the Committee for inviting me here today to discuss issues related to the 2020 Census.

My name is Trey Mayfield, and I served as Counsel to the Director of the Census Bureau at the end of the first Trump Administration, during which time many legal issues concerning the methodology, accuracy, and use of 2020 Census data were raised.

Our Constitution is largely concerned with structuring our form of Government, and placing textual limits on power. The decennial Census is one of the very few specific exercises of power mandated by the Constitution.

The Census Clause is firmly lodged in Article I of the Constitution. It is, for constitutional purposes, a congressional responsibility.

In order to apportion Members of the House of Representatives among the several States so that the House membership proportionately reflects each State’s population, Article I, Section 2, Clause 3, mandates that there be an “actual Enumeration” every ten years.

Section 2 of the Fourteenth Amendment reaffirms that requirement.

When interpreting the Constitution, we must look to its text, using the commonly understood meaning of its words at the time it was ratified in 1789. The Constitution requires “The actual Enumeration.” Not surprisingly, dictionaries from that time demonstrate that an “enumeration” requires an actual counting, and not just an estimation of numbers. The Founders were well aware of the opportunities for fraud to inflate—or deflate—a given State’s population in order to alter representation in the House. For that reason, the federal government was charged with conducting the Census, and doing so by actually counting—not estimating—how many people were living in the United States.

Since 1790, Congress has consistently reaffirmed in Census-authorizing legislation that statistical adjustments are prohibited in determining our national population for apportionment purposes. To be sure, Census data is used for many purposes other than apportionment, including disbursing federal funds to states and localities, obtaining demographic data, and ascertaining the

state of the nation in such ways as the Congress and President deem appropriate. Some kinds of statistical adjustments are permissible in performing those functions. But not for enumeration.

Congress has mandated that the Census “be as accurate as possible” and banned the use of statistical adjustment for enumeration because it “poses the risk of an inaccurate, invalid, and unconstitutional census.” Within these limitations, Congress has delegated responsibility for implementing the Census to the Secretary of Commerce and the Census Bureau.

Congress also requires the President report to Congress the total population of the Nation, each State, and the number of representatives to which each State is entitled. There is no law, however, prohibiting the President from reporting additional information to the Congress in that report, such as the number of illegal aliens included in that count, and what the results would be in their absence.

Congress has also prohibited the release of any Census data whereby the person who provided the data can be identified.

Purportedly to meet this requirement, civil servants at the Bureau applied a methodology to the 2020 Census called “differential privacy” that violates the Constitution’s actual enumeration requirement, and the congressional prohibitions on the use of such methods. They refused to allow their method to be peer reviewed, or to disclose the data upon which they concluded that differential privacy was needed instead of the method the Bureau had used previously, known as “data swapping.”

Using differential privacy altered both the count and the characteristics of individuals and households reported at the region, district, town and census block level. In essence, the Bureau’s reported population data moved people around within states.

For instance, when testing differential privacy using the data from the previous Census in 2010, the population of Port Royal, Virginia was artificially increased by 87%, while the population of Stony Creek, Virginia was decreased by 43%. In other words, differential privacy results in people from larger subgroups and geographic units being moved to smaller ones.

Opposition to differential privacy was unanimous among Census stakeholders. Every letter the Bureau received from outside data scientists and statisticians came to the same conclusion. Differential privacy is illegal, it is data corrupting, and it addresses a non-existent problem.

It was also opposed unanimously by governmental actors and interest groups, for reasons as straightforward as using fake population data makes it difficult for governments to carry core responsibilities, such as drawing district lines, and determining where to locate bus stops and schools. Studies since the 2020 Census data have confirmed that this is exactly what differential privacy does—it adds fake people where they do not live, and subtracts real people from where they do live. Thus, all of the reported enumeration Census data from 2020 below the state level is false.

I welcome the Committee’s questions.

**STATEMENT OF JAY RODRIGUEZ**

Mr. RODRIGUEZ. Thank you, Chair Roy, Ranking Member Scanlon, and the Members of the Committee.

I'm an Assistant Attorney General in the Special Litigation and Constitutional Issues Division of the Kansas Attorney General's Office. In that role, I'm leading a multistate Federal lawsuit against the Department of Commerce challenging its practice of counting illegal aliens in the census.

Mr. ROY. Mr. Rodriguez, can you move a little closer to your microphone or ensure that it's on?

Mr. RODRIGUEZ. Sorry. Is that better?

Mr. ROY. That's better, yes.

Mr. RODRIGUEZ. OK. When illegal aliens are counted, it inflates the count for a few States with high numbers of illegal aliens and gives those, those States more political power and representation at the expense of States with smaller numbers of illegal aliens. That violates the Constitution, which requires an actual enumeration of inhabitants to be used for apportioning House seats, and it violates the principle of equal representation by making votes in some States count less than votes in others.

The census comes out of Article I, Section 2, of the Constitution. It requires Congress to conduct an actual enumeration to be used in the apportionment of Representatives and Electoral College votes, according to the respective numbers in each State.

In the Founding Era, numbers referred to inhabitants, which meant someone with a fixed and permanent connection to the place and some legitimate tie to the political community. Under that definition, illegal aliens are not inhabitants. They're present in the U.S. illegally, subject to removal, and their residence is, therefore, temporary and contingent. They're not bona fide members of the State. They should not be included in any enumeration for purposes of apportionment.

Historically, Congress has delegated its constitutional authority over the census to the Secretary of Commerce and to the Census Act, and the census is conducted according to the rules promulgated by the Secretary.

Every census and apportionment, including the most recent one in 2020, has counted illegal aliens at their usual residence, although it's only in the last few decades that the scale of illegal immigration has significantly affected apportionment.

In the Supreme Court, there are two broad categories of cases that are relevant to these issues. The first concerns equal representation or the principle of one person, one vote. Starting in the 1960s, the Supreme Court found that debasement of votes, or vote dilution, is a justiciable injury, and when State voting districts are unequal in population, it means that votes in less populous districts count more than votes in more populous districts, which violates the Equal Protection Clause and the Apportionment Clause. The Court has held that districts must be equal in terms of total population, not in terms of the number of eligible voters.

In these cases, the Court set the lower boundary of who should be counted. It hasn't set the upper boundary. Even though total population we know is more than just eligible voters, we don't know that it must include illegal aliens.

The second category of relevant cases concerns the conduct of the census. For example, in *Department of Commerce v. New York*, the Court held that asking a question about citizenship was permitted by the Enumeration Clause, given Congress' quote, "unlimited discretion" to conduct the census, but including the question violated the Administrative Procedure Act. Without an APA violation, a citizenship question could likely be included in the next census if it was produced by a reasoned decisionmaking process.

In *Trump v. New York* in 2020, the Court heard that challenge to a Trump Administration memo which planned to exclude illegal aliens from the already completed census to the extent feasible. The Court dismissed the case for lack of standing, since there was no certainty that anyone would actually be removed from the census pursuant to the memo, but it did not rule on the legality of excluding illegal aliens from an actual enumeration.

The census cases show that Congress has broad authority over what information is collected in the census and that counting illegal aliens remains an open question. The Court has not said whether the Constitution requires counting illegal aliens or prohibits it, or whether Congress has discretion to decide one way or the other. The future of the census will be decided in the courts and in Congress.

Thank you.

[The prepared statement of Mr. Rodriguez follows:]

November 19, 2025

**Written testimony of Jay Rodriguez, Office of the Kansas Attorney General, before the  
House Subcommittee on the Constitution and Limited Government:  
“Enumeration or Estimation: Why Inaccurate Census Results Hurt American Citizens”**

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*The Census and apportionment*

Article I, section 2, of the Constitution requires Congress to conduct, every ten years, an “actual enumeration” of the number of persons in each state, “in such manner as [Congress] shall by law direct.” This is the origin of the census. The actual enumeration is used to apportion representatives and direct taxes among the states, “according to their respective numbers.” The 435 seats in the House of Representatives are divided up among the states based on the count produced by the census. The count is also used to apportion the electoral college votes of each state, which are based on the number of Congressional seats in each state. Art. II, sec. 1.

Apportionment is now determined by the Fourteenth Amendment, which updated the original Article I apportionment to remove the infamous three-fifths clause. To ensure that the Southern slaveholding states would not refuse to ratify the Constitution, the Framers structured apportionment in Article I so that it based on a count of “the whole number of free Persons... excluding Indians not taxed, [and] three fifths of all other Persons.” Three-fifths of all other persons meant slaves in the Southern states. This provision empowered the slave states by granting them more representation in the House of Representatives than they would have had if slaves were not counted.

After the Civil War, Congressional Republicans from the Northern states proposed constitutional amendments to end slavery and to ensure that the freed slaves would be citizens and have the rights of citizens. The Fourteenth Amendment thus contains a Citizenship Clause, Due Process Clause, Equal Protection Clause, and Privileges and Immunities Clause—each of these, in different ways, ensured that the freed slaves would be protected by the Constitution.

Congress also removed the three-fifths clause by adding section 2 to the Fourteenth Amendment: “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.” “Whole persons” thus replaced “three fifths of persons” in the original Apportionment Clause, but did not otherwise change the meaning of Article I, section 2.

However, Congress recognized that eliminating the three-fifths clause would cause a serious problem. By counting the freed slaves as whole persons, instead of three-fifths, the Southern states, losers of the Civil War, would see an increase in their power in the House of Representatives, which would perversely come at the expense of the winners of the war.

So Congress added another provision into section 2:

But when the right to vote at any election [state or federal] is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United

States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.<sup>1</sup>

In other words, if a class of citizens is denied the right to vote in a state, the state's population "shall be reduced" for apportionment purposes by the number of disenfranchised citizens. This would force the former slave states either to let freed slaves vote, or lose seats in the House of Representatives and votes in the electoral college. More broadly, it tied apportionment even more closely to membership in the political community. Those who were excluded from the political community would not be counted for apportionment.

***The census is an enumeration of inhabitants***

The original understanding of Article I, section 2's "numbers" was that it meant "inhabitants." The Framers' original approved draft of section 2 used the word "inhabitants." It was changed to "numbers" by the Style Committee, which was responsible for ensuring a consistent style throughout the approved articles of the Constitution—it was not authorized to make substantive changes to any of the articles. *See* 2 Records of the Federal Convention of 1787, 350 fn. 13 (Max Farrand, ed., Yale University Press, 1937) (showing early draft of Apportionment Clause referred to 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))."

This original understanding also appeared in the Federalist Papers. James Madison, in Federalist 54, explained that section 2 concerned "inhabitants:" the "fundamental principle of the proposed Constitution" is that the "aggregate number of representatives allotted to the several States is to be determined by a federal rule, founded on the aggregate number of inhabitants." *The Federalist* No. 54, at 284 (George W. Carey & James McClellan, eds., 2001). And he used the same term in Federalist 58 when he discussed the purpose of the actual enumeration: "Within every successive term of ten years a census of inhabitants is to be repeated. . . . to readjust, from time to time, the apportionment of representatives to the number of inhabitants." *Id.* at 301.

The First Congress had the same understanding, as the first census legislation in 1790 required a count of "inhabitants." The bill was titled "An Act Providing for the Enumeration of the Inhabitants of the United States." Ch. 2, sec. 1, 1 Stat. 101 (1790). And it required a count of "the number of the inhabitants within their respective districts."

It is important that Article I, section 2 referred to "inhabitants" because "inhabitant" had a specific meaning for the Framers. The word "inhabitant," unlike "resident," implied membership in the political community. An inhabitant is not anyone who just happens to be in a state on census day, it is someone with an enduring tie to the state. Dictionary definitions from the Founding era show that "inhabitant" meant "a person that resides or ordinarily dwells or lives in a place or house, but in Parish Law, they only who pay the several taxes, and are liable to serve offices, are called

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<sup>1</sup> The reference to "male inhabitants ... being twenty-one years of age" has presumably been superseded by the Nineteenth and Twenty-sixth Amendments.

inhabitants.” Dyche and Pardon, *A New General Dictionary* 1760. Inhabitant was also defined as “one who dwells or resides permanently in a place, or who has a fixed residence, as distinguished from an occasional lodger or visitor.” Webster, *American Dictionary of the English Language* 1828. These contemporary definitions show that the commonly understood meaning of “inhabitant” required one to have some fixed and permanent connection to the place inhabited, with some legitimate tie to the political community.

This definition was the basis of two 1824 challenges to seating representatives in the House of Representatives. These directly concerned the qualifications of representatives, rather than apportionment, but they further illustrate the original understanding of the term “inhabitant.”

In the first instance, John Bailey was elected to represent Massachusetts; he was from Massachusetts but had lived in Washington DC for the previous six years. The House Committee of Elections reviewed his claim to be seated and said that by using the term “inhabitant” rather than “Resident,” the Framers “intended more clearly to express their intention that the persons to be elected should be completely identified with the State in which they were chosen.” As inhabitants, prospective representatives should be “bona fide members of the State, subject to all the requisitions of its laws, and entitled to all the privileges and advantages which they confer.” See *Cases of Contested Elections in Congress* 412 (M. Clarke & D. Hall, eds., 1834). And the House refused to seat Bailey. He was not a bona fide member of Massachusetts, and therefore not an inhabitant of his district.

In the second instance, John Forsyth was elected to represent Georgia, though he had been serving as foreign minister to Spain at the time he was elected. The Committee of Elections found that his work for the United States did not mean that he was no longer an inhabitant of Georgia, because “he had no other inhabitancy in any other part of the Union.” *Id.* 498. Spain was not his permanent home. Thus, though he lived in Spain at the time of his election, he remained an inhabitant of Georgia, not Spain.

***Illegal and nonimmigrant aliens are not “inhabitants”***

The Fourteenth Amendment’s Apportionment Clause uses the term “persons” to refer to “members of the people.” And “the people” refers to persons who are “members of the political community” constituted by the Constitution and the laws of the United States. *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008). This makes it virtually synonymous with “inhabitants.”

Illegal aliens are not inhabitants because they are not members of the political community. Their presence in any state violates the law and policy of the United States.<sup>2</sup> They accordingly have a temporary, contingent presence in the United States, made possible only by the discretion and limited resources of law enforcement. This is the opposite of the original understanding of

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<sup>2</sup> See, e.g., 8 U.S.C. § 1601(6) (announcing “compelling government interest to remove the incentive for illegal immigration provided by the availability of public benefits.”). And they are subject to removal. See 8 U.S.C. § 1182(a) (listing inadmissible aliens, including “aliens present without admission or parole”); *id.* § 1227(a)(1) (noting classes of deportable aliens, including those “inadmissible at time of entry”); *id.* § 1229a(a)(2) (noting that inadmissible aliens are removable).

“inhabitants,” who have a fixed abode in a state, with a legitimate connection to the state and the people.

***Only inhabitants should be counted for apportionment***

Article I, section 2, requires an actual enumeration of inhabitants, which is defined to exclude people who are present in a state unlawfully or temporarily. Apportionment should therefore include only citizens and lawful permanent residents. The Fourteenth Amendment did not expand the class of people who should be counted—it just removed the three-fifths clause. So it should be understood in the same way as the original Apportionment Clause in the Constitution.<sup>3</sup>

Further, Section 2 of the Fourteenth Amendment explicitly excludes citizens who are denied the vote from being counted in a state’s population for purposes of apportionment. This clause applies directly only to citizens, but it provides additional evidence of who should be counted for apportionment. The exclusion of disenfranchised citizens indicates that people with much weaker ties to the political community, such as illegal and nonimmigrant aliens, should similarly not be counted in the apportionment. And the same reasoning would apply to exclude from the apportionment illegal and temporary aliens that applied to excluding the freed slaves: Congress did not want states to increase their power in the House of Representatives by maintaining large populations of a disenfranchised underclass. If adult citizens who are denied the right to vote are not counted for apportionment, then illegal and nonimmigrant aliens who are denied the right to vote should also not be counted.

***Review of judicial decisions***

There are two broad categories of caselaw that are particularly relevant to apportionment. The first concerns the “one person, one vote,” or “equal representation” principle. If equal representation requires states to maintain electoral districts of roughly equal populations of citizens and permanent residents, then counting illegal and nonimmigrant aliens may violate the Equal Protection Clause. The second category concerns who should be counted in the census and how. These cases address whether Article I, section 2, and the Apportionment Clause require or prohibit counting illegal and nonimmigrant aliens.

The following cases highlight the relevant caselaw concerning the “equal representation” principle:

*Baker v. Carr*, 369 U.S. 186 (1962)

The Court reviewed Tennessee state districts that had not been updated for 60 years, while the population of the state had vastly increased. The districts were not remotely equal. The Court

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<sup>3</sup> While the Supreme Court has held that “persons” in the Fourteenth Amendment’s Due Process and Equal Protection Clauses includes to illegal aliens, *see, e.g., Plyler v. Doe*, 457 U.S. 202 (1982), it does not follow that “whole persons” has the same meaning when used in the Apportionment Clause. The Apportionment Clause did not modify the definition, in Article I, sec. 2, which meant “inhabitants.” And the Due Process and Equal Protection Clauses have a wider application than the Apportionment Clause: the former apply to corporations, for example, which would be clearly inappropriate to count for apportionment purposes.

found that “debasement of votes” was a justiciable injury under the Equal Protection clause of the Fourteenth Amendment. But they remanded to the district court without ruling on the apportionment itself.

*Gray v. Sanders*, 372 U.S. 368 (1963)

*Gray* established the Court’s equality of representation doctrine. The Court overturned a Georgia system of using county units to select primary election candidates for statewide office. When votes were weighted by geography, some voters in less populated districts had more power than others in more populated districts. By violating the principle of equal representation (one person, one vote), Georgia violated the Equal Protection Clause.

*Wesberry v. Sanders*, 84 S.Ct. 526 (1964)

Georgia Congressional districts of vastly different size (some more than three times larger than others) were challenged as violating Art. I, sec. 2. The Court held that

construed in its historical context, the command of Art. I, s 2, that Representatives be chosen ‘by the People of the several States’ means that as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s. This rule is followed automatically, of course, when Representatives are chosen as a group on a statewide basis, as was a widespread practice in the first 50 years of our Nation’s history. 530.

Furthermore, “[t]he debates at the Convention make at least one fact abundantly clear: that when the delegates agreed that the House should represent ‘people’ they intended that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State’s inhabitants.” 532.

*Reynolds v. Sims*, 84 S.Ct. 1362 (1964)

In *Reynolds*, the Court applied the principle of one person, one vote, to state legislature elections, and overturned an Alabama constitutional apportionment that was based on counties, rather than population, and which had not been updated since the 1900 census. As in *Gray*, this practice was held to violate the Equal Protection clause.

*Franklin v. Massachusetts*, 505 U.S. 788 (1992).

The Court reviewed the census practice of assigning overseas federal employees to their home state. Allocating these employees to their home state was deemed consistent with the practice of assigning people to their “usual residence,” which had been the standard used since the first census. The Court maintained its commitment to equal representation and held that *any* rule governing the conduct of the census and apportionment must be “consistent with the constitutional language and the constitutional goal of equal representation.” *Id.* at 804.

Further, the Court reiterated that ties to the States were essential to being counted in the census: “the Secretary of Commerce made a judgment, consonant with, though not dictated by, the text and history of the Constitution, that many federal employees temporarily stationed overseas had

retained their ties to the States and could and should be counted toward their States' representation in Congress... The Secretary's judgment does not hamper the underlying constitutional goal of equal representation, but, assuming that employees temporarily stationed abroad have indeed retained their ties to their home States, actually promotes equality." *Id.* at 806.

*Evenwel v. Abbott*, 578 U.S. 54 (2016)

Voters in Texas challenged that legislative map that used roughly similar sized districts by total population, but which were unequal (with differences up to 40%) in the number of eligible voters. The Court held that House seats must be allocated based on total population, not number of voters. And it rejected the claim that districts with unequal eligible-voter populations violated the Equal Protection Clause.

The Court suggested that the “nonvoters” it was concerned about having representation were still “constituents:” “Nonvoters 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. By ensuring that each representative is subject to requests and suggestions from the same number of constituents, total population apportionment promotes equitable and effective representation.” *Id.* at 74.

Following *Evenwel*, equal representation has not been the subject of many important lawsuits. But in 2019, the First Circuit Court of Appeals interpreted *Evenwel* that suggests the Constitution permits, but does not require, excluding non-permanent residents and non-citizen immigrants.

In *David v. City of Cranston, Rhode Island*, 837 F.3d 135 (2019), the First Circuit recently reviewed a city’s inclusion of the entire local prison population in one of its legislative districts. The Court held that since the prison population was part of the total population, the district complied with the requirements of *Evenwel*.

However, in dicta, the Court suggested that “total population” does not necessarily include people with weaker ties to the community:

“It is implausible that the Court would have observed that the majority of states use unadjusted total population (including prisoners) from the Census for apportionment, upheld the constitutionality of apportionment by total population as a general proposition, and yet implied that the inclusion of prisoners in total population for apportionment, without any showing of discrimination, is constitutionally suspect. The more natural reading of *Evenwel* is that the use of total population from the Census for apportionment is the constitutional default, but *certain deviations are permissible, such as the exclusion of non-permanent residents, inmates, or non-citizen immigrants.*” 144 (emphasis added)

To summarize the equal representation cases, the Equal Protection Clause and the Apportionment Clause require an apportionment based on total population, with roughly equal districts (about 10% difference being the maximum allowed). Equal representation applies to all voting districts. But the courts have not restricted the category of “total population,” except to say that it includes more than the population of eligible voters.

In the second category of relevant caselaw, these cases highlight the Supreme Court’s decisions concerning the conduct of the census:

*Department of Commerce v. U.S. House of Representatives*, 525 U.S. 316 (1999)

The Court reviewed the proposed uses of statistical sampling in calculating the population for purposes of apportionment. It held that the Census Act prohibits statistical sampling for enumerating the population, but is allowed for the collection of demographic information.

*Department of Commerce v. New York*, 588 U.S. 752 (2019)

The Department of Commerce was sued after it decided to include a question about citizenship on the census questionnaire. The Court said that asking a citizenship question was consistent with the Enumeration Clause and the Census Act:

“The text of [the Enumeration] clause vests Congress with virtually unlimited discretion in conducting the decennial actual Enumeration, and Congress has delegated its broad authority over the census to the Secretary. Given that expansive grant of authority, we have rejected challenges to the conduct of the census where the Secretary’s decisions bore a reasonable relationship to the accomplishment of an actual enumeration.” *Id.* 768-69 (internal quotations and citations omitted).

Nonetheless, the Court ordered the question removed because its inclusion violated the Administrative Procedure Act (5 U.S.C. 706) because the reasons given in the administrative record for including the question were not the actual reasons for which the Secretary included the question. If the Department of Commerce were to conduct a reasoned decision-making process that complies with the APA, a citizenship question could be added to the 2030 census.

*Trump v. New York*, 592 U.S. 125 (2020)

In 2020, the Trump administration issued a memorandum which announced a policy of excluding “from the apportionment base aliens who are not in a lawful immigration status.” 85 Fed. Reg. 44680. For the 2020 apportionment, the Secretary was directed to include two counts—one with illegal aliens, one without. Illegal aliens would be excluded from the final count “to the extent feasible.” *Id.* Importantly, the census count had already been completed without gathering information from individual respondents about their immigration status, which created significant uncertainty over the feasibility of excluding them from the apportionment.

The District Court found that the memorandum would violate the Census Act (section 141(b), which requires the President to report “*the* tabulation,” and 2a(a), which requires the President to report the “whole number of persons in each state”).

Upon review, the Supreme Court dismissed the complaint due to lack of standing, holding that the alleged injury was conjectural and un-ripe (i.e. it was contingent on future events which may not occur). The majority declined to rule on the legality of excluding illegal aliens from the apportionment count.

In dissent, however, Justices Kagan, Sotomayor and Breyer wrote that they would not only hear the case—since they believed the plaintiffs had standing and the case was ripe for review—but they would find that the memorandum violated the Census Act. They would not rule on the Constitutional question of whether excluding illegal aliens violated section 2 of the Fourteenth Amendment.

Finally, since 2018, there have been two state challenges to the inclusion of illegal aliens in the apportionment count—one by Alabama, another by Kansas, Louisiana, Ohio, and West Virginia.

*Alabama v. Department of Commerce*, No. 2:18-cv-772 (N. Dist. Ala.).

In 2018, Alabama challenged the Residence Rule and the practice of counting illegal aliens in the census. The district court did not issue a ruling on the merits. Instead, the case was dismissed when Alabama, which had alleged it would lose a seat in the 2020 census, did not actually lose a seat.

*Kansas v. Department of Commerce*, No. 6:25-cv-76 (W. Dist. LA).

In a challenge similar to Alabama’s 2018 lawsuit, Kansas, Louisiana, Ohio and West Virginia have sued the Department of Commerce for its practice of counting illegal and nonimmigrant aliens. This case, filed in January, 2025, has been stayed for several months, at the request of the Department of Commerce, but is expected to resume in 2026. As with *Alabama*, there has been no ruling on the merits.

In sum, neither the Supreme Court nor any Appellate Court has ruled on who may not be included in the “total population” or who must be counted in the census. “Total population” remains the requirement, but the caselaw suggests only that “total population” is a larger category than just eligible voters; the outer limit has not been established. Thus, there remain open questions:

- Does apportionment based on “total population” require counting people who are unlawfully present in the states and subject to removal? Or does it require that members of the “total population” have some stronger political and legal connection to their state?
- Does a significant difference in two voting districts’ population of citizens and permanent residents violate the principle of equal representation?
- Is the Enumeration Clause violated when the “actual Enumeration” consists of illegal and nonimmigrant aliens?

### ***Conduct of the census***

As noted above, the first Census Act required a count of “inhabitants” at their “usual place of abode;” “every person occasionally absent at the time of the enumeration [would be counted] as belonging to that place in which he usually resides in the United States.” Ch. 2, sec. 5, 1 Stat. 101 (1790). This approach has more or less persisted in every subsequent census.

Since 1980, the Census Act, 13 U.S.C. § 1 *et seq.*, has delegated to the Secretary of Commerce broad authority to conduct the decennial census. § 4. The Act provides that the Secretary “shall, 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.” 13 U.S.C. § 141(a). And it requires that “[t]he tabulation of total population

by States ... as required for the apportionment of Representatives in Congress among the several States shall be completed within 9 months after the census date and reported by the Secretary to the President of the United States.” 13 U.S.C. § 141(b). Using this information, the President must then “transmit to the Congress a statement showing the whole number of persons in each State ... and the number of Representatives to which each State would be entitled.” 2 U.S.C. § 2a(a). Within 15 days thereafter, the Clerk of the House of Representatives must “send to the executive of each State a certificate of the number of Representatives to which such State is entitled.” 2 U.S.C. § 2a(b).

Pursuant to the Census Act, people are counted at their “usual residence” where they live and sleep most of the time. No census has yet excluded anyone based on immigration status. That includes the 2020 census, which was conducted pursuant to the Residence Rule (83 Fed. Reg. 5525, Feb. 8, 2018). Under the Residence Rule, “[c]itizens of foreign countries living in the United States” are “[c]ounted at the U.S. residence where they live and sleep most of the time.” 83 Fed. Reg. at 5533. Accordingly, the latest census data and the apportionment of congressional seats and electoral college votes is based on population counts that include illegal and nonimmigrant aliens.

***The effect on apportionment of counting illegal aliens in the census***

While the law remains unsettled, counting illegal aliens has had a significant effect on the distribution of seats in the House of Representatives and the Electoral College. This is because the illegal and temporary alien population is both large and highly concentrated in a minority of states.

At the end of the 1990s, about 1.5 million immigrants, both legal and illegal, began arriving in the United States each year. And that rate has remained stable since then. In 2016, the Department of Homeland Security (DHS) determined that an estimated 1.1 million persons were granted legal permanent resident status in the United States, up from 1 million in 2015 and 2014.<sup>4</sup> By contrast, immigration to the United States in the Ellis Island migration wave peaked at about 800,000 persons per year between 1900 and 1909.<sup>5</sup> The Ellis Island wave had been, until today, the largest migration in United States history.

But many of these immigrants are not lawfully present. DHS estimates that 11.57 million illegal aliens resided in the United States in 2018, and that 10.99 million lived in the United States in 2022.<sup>6</sup> Other estimates substantially confirm these numbers. Pew Research Center estimated 11 million illegal immigrants in the U.S., and noted their estimates probably understate the number of illegal aliens in the U.S. since they do not account for the record levels of illegal immigration in

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<sup>4</sup> U.S. DEPARTMENT OF HOMELAND SECURITY, PERSONS OBTAINING LAWFUL PERMANENT RESIDENT STATUS: FISCAL YEARS 1820 TO 2016 (Dec. 2017), *available at* <https://www.dhs.gov/immigration-statistics/yearbook/2016/table1>

<sup>5</sup> George J. Borjas, *We Wanted Workers: Unraveling the Immigration Narrative* 52 (2016).

<sup>6</sup> Bryan Baker & Robert Warren, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2018-January 2022*, DHS Office of Homeland Security Statistics (April 2024), *available at* [https://ohss.dhs.gov/sites/default/files/2024-06/2024\\_0418\\_ohss\\_estimates-of-the-unauthorized-immigrant-population-residing-in-the-united-states-january-2018%25E2%2580%2593january-2022.pdf](https://ohss.dhs.gov/sites/default/files/2024-06/2024_0418_ohss_estimates-of-the-unauthorized-immigrant-population-residing-in-the-united-states-january-2018%25E2%2580%2593january-2022.pdf)

2022-2023.<sup>7</sup> When the surge of 2022-2023 is taken into account, according to the Center for Migration Studies, the illegal alien population is estimated to be at least 11.7 million.<sup>8</sup> According to the Pew Research Center, the population of nonimmigrant aliens in the U.S. is approximately 2 million.<sup>9</sup> The most recent data from DHS showed 3.2 million nonimmigrant aliens residing in the U.S. in 2019.<sup>10</sup>

These 11-15 million illegal and nonimmigrant aliens are not evenly distributed throughout the U.S. In 2022, according to the Pew Research Center, 56% of the nation's 11.7 million illegal aliens lived in just six states: California, Texas, Florida, New York, New Jersey, and Illinois.<sup>11</sup> DHS estimates showed a similar 59% of all illegal aliens living in the top six states, and 72% in just ten states.<sup>12</sup> The distribution of nonimmigrant aliens resembles the distribution of illegal aliens, and is nearly as concentrated in a small number of states. More than half live in just six states, and two-thirds in just ten states.<sup>13</sup>

The practice of including illegal aliens in the census has repeatedly distributed additional House seats and electoral votes to these few states with high numbers of illegal aliens, away from states with low numbers, depriving those states and their citizens of their rightful share of representation and political power.

- In 2000, the presence of illegal aliens likely caused Indiana, Michigan, and Mississippi to lose a seat, Montana to fail to gain a seat it would otherwise have gained, and California and North Carolina to gain three seats and one seat, respectively.<sup>14</sup>

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<sup>7</sup> Jeffrey S. Passel & Jens Manuel Krogstad, *What we know about unauthorized immigrants living in the U.S.*, PEW RESEARCH CENTER (July 22, 2024), <https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/>.

<sup>8</sup> Robert Warren, *US Undocumented Population Increased to 11.7 Million in July 2023: Provisional CMS Estimates Derived from CPS Data*, CENTER FOR MIGRATION STUDIES (Sept. 5, 2024), available at <https://cmsny.org/us-undocumented-population-increased-in-july-2023-warren-090624/#:~:text=The%20total%20undocumented%20population%20increased,to%2010%20million%20in%202020.>

<sup>9</sup> Mohamad Moslimani & Jeffrey S. Passel, *What the data says about immigrant in the U.S.*, PEW RESEARCH CENTER (Sept. 27, 2024), <https://www.pewresearch.org/short-reads/2024/09/27/key-findings-about-us-immigrants/>.

<sup>10</sup> See Bryan Baker, *Population Estimates of Nonimmigrants Residing in the United States: Fiscal Years 2017-2019* at 4, DHS OFFICE OF HOMELAND SECURITY STATISTICS (May 2021), [https://ohss.dhs.gov/sites/default/files/2023-12/ni\\_population\\_estimates\\_fiscal\\_years\\_2017\\_-\\_2019v2.pdf](https://ohss.dhs.gov/sites/default/files/2023-12/ni_population_estimates_fiscal_years_2017_-_2019v2.pdf).

<sup>11</sup> Jeffrey S. Passel & Jens Manuel Krogstad, *What we know about unauthorized immigrants living in the U.S.*, PEW RESEARCH CENTER (July 22, 2024), <https://www.pewresearch.org/short-reads/2024/07/22/what-we-know-about-unauthorized-immigrants-living-in-the-us/>.

<sup>12</sup> Baker & Warren, *supra* n. 6.

<sup>13</sup> See Baker, *supra* n. 10.

<sup>14</sup> Dudley L. Poston, Jr., Steven A. Camarota, & Amanda K. Baumle, *Remaking the Political Landscape: The Impact of Illegal and Legal Immigration on Congressional Apportionment*, CENTER FOR IMMIGRATION STUDIES (Oct. 2003), <https://cis.org/Report/Remaking-Political-Landscape>.

- In 2010, the presence of illegal aliens likely caused Louisiana, Missouri, and Ohio to lose a seat, Montana to fail to gain a seat it would otherwise have gained, California to gain two seats, and caused Florida and Texas to each gain one.<sup>15</sup>
- In 2020, the presence of illegal aliens likely caused Ohio and New York to lose a seat, and Texas and California to gain a seat.<sup>16</sup>

***Authority for Congressional action***

Although the Supreme Court will decide whether apportionment must include or exclude illegal and nonimmigrant aliens, there is room for Congressional action until the Court acts, and beyond, if the Court determines the Constitution neither requires nor forbids their inclusion.

Congress has broad authority under Article I, section 2 to design the census, and is explicitly empowered to enforce the terms of the Fourteenth Amendment, Am. XIV, sec. 5. These sources of Constitutional authority allow Congress to legislate the details of how the census is conducted and define who should be counted toward a state's apportionment.

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<sup>15</sup> Steven A. Camarota, *Shifting the Balance: How the Gang of Eight bill and Immigration generally shifts seats in the House of Representatives*, CENTER FOR IMMIGRATION STUDIES (Nov. 2013), <https://cis.org/sites/default/files/camarota-house-reapportionment.pdf>.

<sup>16</sup> See Steven A. Camarota & Karen Zeigler, *Tilting the Balance: Estimating the impact of legal and illegal immigration on apportionment and political influence in the U.S. House and Electoral College*, Oct. 31, 2024, <https://cis.org/Report/Tilting-Balance>.

Mr. ROY. Thank you, Mr. Rodriguez. I'll now turn to Mr. Miller. You have five minutes.

#### STATEMENT OF JOSEPH MILLER

Mr. MILLER. Mr. Chair and the Members of the Subcommittee, thank you for inviting me to testify about the serious flaws in the 2020 Census caused by the Census Bureau's first-ever use of differential privacy.

Differential privacy is an algorithm that deliberately injects noise—in plain English, false data—into census results below the State-level data, all the way down to individual blocks. It alters racial and household composition, changes population counts, and even shifts those fabricated numbers to entirely different neighborhoods, cities, or counties.

Census employees will say they are statutorily required to protect privacy as justification for choosing differential privacy to achieve that goal. Under differential privacy, the Bureau insists that State-level totals remain accurate, but everything below that level is intentionally distorted. The amount of distortion is Top Secret. Only a handful of Bureau officials know the true, unaltered numbers. The consequences are severe and criticism is bipartisan.

Harvard data scientists found that differential privacy artificially reduces racial and partisan diversity, making it impossible to achieve genuine one-person, one-vote equality. The Mexican-American Legal Defense and Education Fund and Asian Americans Advancing Justice concluded that the data altered by this method are too inaccurate to satisfy the Voting Rights Act or the equal population requirements for redistricting.

Rural and low-population areas suffer the greatest proportional harm, destroying the partisan makeup of Congress and potentially affecting billions in Federal funding. Differential privacy also has three fatal structural flaws:

(1) It renders the count question resolution process meaningless. Localities can no longer tell whether a number is wrong because of an actual counting error or because the Bureau intentionally falsified it.

(2) It injects distorted data into every State's redistricting process, casting doubt on the legitimacy of district lines.

(3) It effectively gives bureaucrats a permanent tool to obscure noncitizen and illegal immigrant populations, nullifying any future citizenship question and shifting political power away from American citizens.

Some limited analysis suggests an estimated two percent movement of numerical population data, but some reporting has suggested that upwards of 20 percent movement is allowable. Either way, this poses serious constitutional concerns.

Compounding these problems, the 2020 Census was the most inaccurate in modern history. The Bureau's own Post-Enumeration Survey admitted statistically significant undercounts in six States, mostly Red States—Arkansas, Florida, Illinois, Mississippi, Tennessee, and Texas—and overcounts in eight States, mostly Blue States—Delaware, Hawaii, Massachusetts, Minnesota, New York, Ohio, Rhode Island, and Utah.

Those errors alone shifted at least six Congressional seats and Electoral votes to the wrong States. Those errors all benefited Democrats. When you combine known political imbalances in the raw count with an opaque algorithm that deliberately moves and alters population data, and all those problems, coincidentally, mathematically tend to benefit the Left, it is reasonable for Americans to conclude that the 2020 Census was weaponized, if not intentionally, through malpractice.

Public trust in the Census Bureau has been badly damaged as a result. Restoring that trust is simple. Congress and the current and next administration must correct the errors committed by the Census Bureaucracy leading up to the 2020 Census and permanently prohibit the use of differential privacy.

Differential privacy policy for the purposes of satisfying statutory privacy requirements is insufficient as a justification. Statutory privacy requirements cannot serve as grounds for ignoring the constitutional requirements that flow from Census data.

The 2030 Census returns need to be accurate, transparent, and politically neutral, the way the Constitution demands.

Thank you. I look forward to your questions.

[The prepared statement of Mr. Miller follows:]

**Hearing Before the U.S. House of Representatives**  
**Committee on the Judiciary, Subcommittee on the Constitution and Limited**  
**Government**

**Opening Statement of Mr. Joseph Miller**  
**November 19, 2025**

Mr. Chairman and honored Members of the Subcommittee,

Thank you for the opportunity to testify about the significant errors in the 2020 Census and their impact on American citizens. My name is Joseph Miller. I am the Senior Advisor at the Center for Renewing America. Today, I am here on behalf of colleagues at the Center for Renewing America to discuss our research on the error-ridden 2020 Census, specifically the implementation of a novel mathematical framework known as differential privacy.

"Differential privacy" was used for the first time in the 2020 Census. It is an algorithmic method that intentionally injects "noise" into both the characteristic and numerical census data to ostensibly comply with longstanding statutory requirements to protect individual privacy and personal information. This "noise" muddies, swaps, and redistributes data throughout each level of census geography beneath the state level, all the way down to the lowest census unit: the block level. The term "noise" is actually a sanitized term—a better way to frame it is that differential privacy injects false information into census data. Those who devised this methodology consider this falsified data to be a feature and not a bug. To provide an example of how it works, differential privacy's algorithm will take a specific street or neighborhood, alter the demographic composition of that neighborhood, alter the numerical composition of that neighborhood, and then move that neighborhood's newly-altered data profile across town, into another nearby county, or, conceivably, to the other side of the state.

To the best of our knowledge, this mass data falsification occurred on every street, in every neighborhood, in every city, in every county, and in every state as part of the 2020 Census. In theory, all the numbers are supposed to be accurate at the state level, despite such a mass infusion of falsified information. All of this was purportedly done in the name of "privacy protection." The variance of this "noise" is not fully known or understood. Whether the characteristic and numerical data are two percent false at each geographic unit or 15 percent false can only truly be known by those who have access to the raw data. The reality is that the algorithmic impacts from differential privacy are essentially proprietary information held by the upper echelon of the Census Bureau. The unaltered dataset, therefore, is known only to a handful of government bureaucrats working within the Bureau. Data available for public consumption is intentionally false and significantly distorted.

The full impact of differential privacy is still being uncovered. What has been uncovered thus far is far from reassuring, and the concerns span the political spectrum. In a 2021 study, Harvard data scientists determined that differential privacy "has a tendency to transfer population across geographies in ways that artificially reduce racial and partisan heterogeneity." Further, these Harvard data scientists found that differential privacy "makes it impossible to accurately comply with the One Person, One Vote principle as currently interpreted and implemented." An April 2021 report co-authored by the Mexican-American Legal Defense and Education Fund, as well as Asian Americans Advancing Justice, concluded in their findings that differential privacy produced data that "would not be of sufficient quality to meet the legal requisites of redistricting – the constitutional requirement of equal population between districts and the necessity of compliance with the federal Voting Rights Act of 1965 (VRA)."

From our perspective at the Center for Renewing America, differential privacy has three fundamentally fatal flaws. First, the opacity of the algorithm renders the Count Question Resolution (CQR) process moot, undermining a fundamental transparency mechanism long used by municipalities and political subdivisions of the states to assess and correct errors made during the decennial census process.

Because the 2020 Census made use of this algorithm that intentionally creates errors, localities have no idea if mistakes are actual count errors or if they are intentionally false microdata associated with differential privacy. Second, differential privacy introduces distorted datasets into the redistricting process that states use to draw political maps, obfuscating the actual populations within voting districts and creating legitimate questions about the relative political and policy impact on both urban and rural districts. Indeed, the law of numbers suggests a disproportionately harmful impact on areas with lower populations in rural districts, particularly as it pertains to federal funding formulas. And third, differential privacy serves as a prospective “failsafe” mechanism to nullify the implementation of the all-important citizenship question, providing bureaucrats with the algorithmic ability to distort, mask, and redistribute the location of illegal immigrant and non-citizen populations for potential political gain at the expense of American voters.

All this plays into the fact that the 2020 Census was the most inaccurate and error-ridden in modern American history. In its Post-Enumeration Survey (PES), the Bureau admitted as much when it revealed that there were statistically significant *undercounts* in six mostly red states (Arkansas, Florida, Illinois, Mississippi, Tennessee, and Texas) and statistically significant *overcounts* in eight mostly blue states (Delaware, Hawaii, Massachusetts, Minnesota, New York, Ohio, Rhode Island, and Utah). Analysis of these errors strongly suggests that at least six seats were improperly granted to the current House Minority. While not impossible, the statistical odds that all these errors would benefit one political party at the exclusion of the other are highly improbable.

Further, when differential privacy is added to the equation, it is reasonable for people to conclude that the 2020 Census was politically weaponized and that there is an effort to put the proverbial thumb on the scales in service to a more progressive political ideological bent. In other words, these known impacts of differential privacy further underscore why people have lost trust in their institutions and why the benefit of the doubt is no longer afforded to the “expert” class.

The weaponization of the bureaucracy and institutions in service to a far-left ideological agenda has severed the trust between American citizens and their government. This trust must be restored for the well-being of our republic. When it comes to the constitutional mission that animates the Census Bureau, particularly given the very real impacts that the census has on redistricting and apportionment, restoring that trust begins with permanently eliminating differential privacy so that an accurate and transparent baseline is in place for the 2030 Census.

Thank you for your time, and I look forward to answering your questions.

Mr. ROY. Thank you, Mr. Miller. I'll now turn to Mr. Yang, and you have five minutes.

**STATEMENT OF JOHN C. YANG**

Mr. YANG. Thank you. Good morning. Chair Roy, Ranking Member Scanlon, Committee Chair Jordan, and Ranking Member Raskin, thank you for inviting me to testify here today.

My name is John C. Yang. I am the President and Executive Director of Asian Americans Advancing Justice, AAJC.

AAJC is part of a national network that includes independent affiliates in Atlanta, Chicago, and Los Angeles, as well as 37 community partners in 37 different States, as well as the District of Columbia.

We have served on numerous advisory Committees for the Census Bureau, including the most recent 2020 Census Advisory Committee. We maintain a permanent Census Program that monitors Census policy, educates policymakers, and conducts community outreach and education.

I appreciate this opportunity to testify before all you on the importance of the accuracy of the census. An inaccurate census hurts everyone in this country. Over \$2.2 trillion in Federal funding is allocated based on Census data. State and local governments decide where to build hospitals, where to build schools, how to widen highways, based on the Census data. Businesses decide where to put new stores, what inventory to include in those new stores, based on demographic data provided by the census.

That's why every administration going back to 1790, whether Republican, Democrat, Whig, Federalist, and Democratic-Republican, has supported policies and supported a budget to fund an accurate census.

Traditionally, ensuring an accurate census has been a bipartisan endeavor, and it has been about science and has about statistics. Under the Constitution, the census requires the counting of the whole number of people. The Supreme Court, as well as the text and history of the 14th Amendment, makes clear that apportionment is based on total population and not subsets.

Arguments about counts based solely on immigration status or eligible voters have been repeatedly rejected by Congress and the courts. Any attempt to add a question concerning citizenship or immigration status will only make the census inaccurate.

Studies have repeatedly shown that questions such as a citizenship question only cause people to decline to participate in the census. To be clear, those people are not limited to noncitizens, but also include households that include both citizens and noncitizens.

Such inaccuracies will mean that resources would not be distributed appropriately throughout the country. It also contradicts the Constitution's edict to equal representation for all.

The Census Bureau is committed to producing and disseminating objective, credible, and useful statistics to support the decision-making of governments, businesses, philanthropy, and social service organizations.

Although the total population count of the 2020 Census did not see a significant overcount or undercount, we did see that specific populations did have undercounts. The 2020 Census showed an

undercount for children under four of over five percent; of rural areas were undercounted by around four percent; the Hispanic community was undercounted by over five percent; the African American community by around three percent; and the American Indian Tribal population by over five percent.

Now, two common reasons exist for undercounts. First, anti-government sentiment and privacy concerns are causing people to resist sharing information with the government. Less than a third of the U.S. population have trust in the Federal Government.

Accordingly, the Census Bureau takes its responsibility to maintain the confidentiality of the information very, very seriously by ensuring that personally identifiable information is not shared or distributed to any other government or any other agency at any level.

Now, differential privacy is simply one means for accomplishing that confidentiality. Basically, it creates statistical noise to mask personally identifiable characteristics that could be revealed when census data is overlaid with—against other publicly available data. Now, to be clear, and everyone has agreed, differential privacy is not used at the State level, and therefore, has no effect on apportionment.

The second common reason for undercount is a lack of a robust get-out-the-count program, especially for communities that are traditionally undercounted or difficult to count. States that invest in their census outreach and invest in their operations are more likely to have accurate counts when compared to States that did not invest in their populations. A State's lack of investment in their census, therefore, not only results in a potential loss of representation in Congress, but also in a loss of resources.

For example, many experts expected that Alabama would lose a Congressional seat in the 2020 Census. The State, however, invested in get-out-the-count operations at an early stage, and Governor Ivey was very vocal in pushing Alabamians to participate. As a result, the State did not lose a seat.

In conclusion, it is clear that calling it "all persons," not just citizens or legal residents, is a constitutional requirement that is also critical for determining the allocation of Federal funds and for making data based business decisions. Rather than seeking to exclude certain classes of people from the count, policymakers and the Census Bureau must do everything they can to ensure that everyone is counted.

Thank you again for the opportunity to testify. I look forward to questions.

[The prepared statement of Mr. Yang follows:]

**Statement Of  
John C. Yang  
President and Executive Director  
Asian Americans Advancing Justice – AAJC**

**Hearing On  
“Enumeration or Estimation: Why Inaccurate Census Results Hurt American Citizens”**

**House of Representatives  
Subcommittee On The Constitution And Limited Government  
Committee On The Judiciary**

**November 19, 2025**

Asian Americans Advancing Justice | AAJC (Advancing Justice | AAJC) submits this written testimony to the House of Representatives Committee on the Judiciary’s Subcommittee on the Constitution and Limited Government in connection with its November 19, 2025, hearing regarding the decennial census. A census every ten years is mandated by the U.S. Constitution and, when there is an accurate count, serves as a foundation for a functioning government and our democracy.

**ORGANIZATIONAL BACKGROUND**

Advancing Justice | AAJC is a national nonprofit, non-partisan organization founded in 1991. Our mission is to advance the civil and human rights of Asian Americans and to build and promote a fair and equitable society for all. Advancing Justice | AAJC considers the census, including the American Community Survey (ACS), to be the backbone of its mission. Advancing Justice | AAJC maintains a permanent census program that monitors census policy, educates policy makers, and conducts community outreach and education on the surveys conducted by the Census Bureau. Advancing Justice | AAJC has been working to eliminate the barriers that have historically resulted in the undercounting and underreporting of Asian Americans in federal data collection and analysis efforts, particularly in the census count. Advancing Justice | AAJC has conducted national outreach and educational campaigns focused on Asian American communities for Census 2000, Census 2010, and Census 2020. Advancing Justice | AAJC was the 2020 Census national resource hub for the Asian American and Native Hawaiians and Pacific Islander communities. Advancing Justice | AAJC has also served as a member of numerous advisory committees to the Census Bureau since 2000, including the National Advisory Committee on Racial, Ethnic and Other Populations, for which Advancing Justice | AAJC served two second three-year term through August 2019, and its Vice President of Census and Voting

served on the 2030 Census Advisory Committee. Additionally, Advancing Justice | AAJC currently co-chairs the Leadership Conference on Civil and Human Rights' Census Task Force.

**THE U.S. CONSTITUTION AND SUPREME COURT DECISIONS REQUIRE A COUNT OF ALL PERSONS**

**The U. S. Constitution.** Article I, sec. 2, clause 3 of the Constitution requires a count every 10 years (decennial census) of all persons living in the country for the purpose of apportioning seats in the U.S. House of Representatives among the states. The Constitution explicitly requires an “actual Enumeration” of “all persons,” imposing on the federal government the duty to count the “whole number of persons in each State.”<sup>1</sup> Both Republican and Democratic administrations, through the U.S. Department of Justice (DOJ), have confirmed unequivocally and consistently throughout our nation’s history that the Constitution requires a count of all persons living in the United States on Census Day, regardless of citizenship or immigration status.<sup>2</sup>

In adopting the 14<sup>th</sup> Amendment, Congress rejected proposals to allocate seats in the House of Representatives based on voter-eligible population alone, rather than total population.<sup>3</sup> Supreme Court rulings affirming the 14<sup>th</sup> Amendment’s guarantee of equal representation require that congressional districts have equal numbers of people.<sup>4</sup> Furthermore, in *Evenwel v. Abbott*, the Supreme Court unequivocally stated that “the Fourteenth Amendment calls for the apportionment of congressional districts based on total population.”<sup>5</sup> In doing so, the Court quoted from both James Madison and Alexander Hamilton in establishing that congressional representation be “founded on the aggregate number of inhabitants.”<sup>6</sup> This principle was confirmed and restated during debates related to the passage of the Fourteenth Amendment. During those debates, some members of Congress fiercely advocated for a “legal voter” basis for congressional apportionment. That view was rejected in the Fourteenth Amendment, which retained the “whole population” basis of apportionment. With the understanding that the Constitution requires total population as the basis for congressional apportionment, it follows that the census must, in fact, count the entire population. Thus, an accurate census must count and account for all persons residing in the United States on Census Day.

<sup>1</sup> 2 U.S.C. § 2a. See also, *Evenwel v. Abbott*, 136 S. Ct. 1120, 1127 (2016).

<sup>2</sup> See Letter from Carol T. Crawford, Assistant Att’y Gen., to Jeff Bingaman, Chairman, Subcomm. on Gov’t Info. & Regul’n (Sept. 22, 1989) (on file with U.S. Dep’t of Justice).

<sup>3</sup> *Evenwel*, 136 S. Ct. at 1127-28.

<sup>4</sup> See *Wesberry v. Sanders*, 376 U. S. 1, 7-8 (1964), *Reynolds v. Sims*, 377 U. S. 533, 568 (1964).

<sup>5</sup> *Evenwel*, 136 S. Ct. at 1129.

<sup>6</sup> *Id.* at 1127.

Following the 1920 Census, in the wake of a new wave of immigration, changing demographics, and a population shift from rural to urban areas, Congress was deadlocked in passing re-apportionment legislation, stuck in a debate about the inclusion of “unnaturalized aliens” in the count. This impasse, in fact, led to a failure to reapportion seats in the House for the entire decade of the 1920s, for the first and only time in the nation’s history. Ultimately, Congress passed legislation that cemented the concept of House reapportionment based on the constitutional requirement of total population figures.<sup>7</sup>

In addition to the constitutional infirmity of excluding noncitizens (including undocumented immigrants) from the count, there is no way to determine both the citizenship and immigration status of every person living in the U.S. without deeply undermining accuracy. The Census Bureau (or any other federal agency) has never fielded a question on immigration status. It is not a stretch to conclude that asking people if they are residing in the country “unlawfully” would cause many to skip the question, or more likely the census entirely. Since the census is a household-based survey, *no members* of a household would be counted, including citizen children, if one member of that household was a person of undocumented, uncertain, or unclear legal status. That outcome would harm every state and nearly every community, not only for representation purposes, but for the fair allocation of federal and state funding and wise private sector investment. Research already has shown that the addition of a citizenship question suppresses the count of immigrant and mixed-status families,<sup>8,9</sup> and feeds into public distrust of the government by all communities. An immigration status question, especially at a time when fear is pervasive in communities where immigrants live, whether in small or large numbers, undeniably would lead to an irreparably inaccurate census.

#### **SCIENTIFIC INTEGRITY IS A HALLMARK OF THE CENSUS BUREAU’S WORK**

The Census Bureau is dedicated to upholding scientific integrity and objectivity through all of its statistical activities and in conducting the decennial census. The Bureau has always been committed to providing high quality data; in 2002, OMB formalized the federal government’s guidelines for data quality.<sup>10</sup> In the years since, the Census Bureau has regularly articulated and

<sup>7</sup> Shanahan, Brendan A. (2025, April 2). A Century-Long Battle Over the Census is Brewing. *Time*. <https://time.com/7265213/battle-over-the-census-brewing/>

<sup>8</sup> J. David Brown, Lawrence Warren, Moises Yi, Misty L. Heggeness, Suzanne M. Dorinski. (2019, June). *Predicting the Effect of Adding a Citizenship Question to the 2020 Census*. Center for Economic Studies, U.S. Census Bureau. <https://www2.census.gov/ces/wp/2019/CES-WP-19-18.pdf>

<sup>9</sup> Brown, J. D., & Heggeness, M. L. (2026). Citizenship question effects on household survey response. *Journal of Policy Analysis and Management*, 45, e70004. <https://doi.org/10.1002/pam.70004>.

<sup>10</sup> Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication, 67 Fed. Reg. 8452 (February 22, 2002), <https://www.federalregister.gov/documents/2002/02/22/R2-59/guidelines-for-ensuring-and-maximizing-the-quality-objectivity-utility-and-integrity-of-information>.

revised its Statistical Quality Standards to align with those guidelines.<sup>11</sup> Each and every Census Bureau employee is required to take data quality and stewardship training both when they begin their role at Census and every year thereafter, underscoring the agency's commitment to privacy, quality, and rigor in their work.<sup>12</sup>

The Bureau, along with other principal statistical agencies, is committed to producing and disseminating objective, credible, and useful statistics to support the decision-making of governments, businesses, philanthropy, and social service organizations.<sup>13</sup> Our nation's statistical agencies, including the Census Bureau, embrace four fundamental principles set forth by the National Academy of Sciences. A Federal statistical agency: (1) must be in a position to provide objective information that is relevant to the issues of public policy; (2) must have credibility with those who use its data and information; (3) must have the trust of those whose information it obtains; and (4) must have a strong position of independence within the government.<sup>14</sup> The Bureau understands that any actual or perceived violation of any of the principles undermines the integrity of, and public confidence in, the data the agency produces.<sup>15</sup> The Census Bureau specifically cites *objectivity* as one of its *Information Quality Guidelines*, committing to providing information that is accurate, reliable, and unbiased.<sup>16</sup> Objectivity in the field of statistical information, such as the census count, requires acknowledging that errors in gathering and compiling data are unavoidable. Therefore, the Bureau readily publishes information on the extent of errors in its data, and the likely sources of those errors, to bolster public confidence in the numbers and help policymakers use the data effectively and prudently.

<sup>11</sup> U.S. Census Bureau, "U.S. Census Bureau Statistical Quality Standards," Census Bureau, April 2023, <https://www2.census.gov/about/policies/quality/quality-standards.pdf>.

<sup>12</sup> U.S. Census Bureau, "DS017 – Data Stewardship Awareness Training," August 2025, [https://www2.census.gov/foia/ds\\_policies/ds017.pdf](https://www2.census.gov/foia/ds_policies/ds017.pdf).

<sup>13</sup> U.S. Census Bureau, Statement of Commitment to Scientific Integrity by Principal Statistical Agencies. [https://www.census.gov/content/dam/Census/about/about-the-bureau/policies\\_and\\_notices/scientificintegrity/Scientific\\_Integrity\\_Statement\\_of\\_the\\_Principal\\_Statistical\\_Agencies.pdf](https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/scientificintegrity/Scientific_Integrity_Statement_of_the_Principal_Statistical_Agencies.pdf)

<sup>14</sup> U.S. Census Bureau, Statement of Commitment to Scientific Integrity by Principal Statistical Agencies. [https://www.census.gov/content/dam/Census/about/about-the-bureau/policies\\_and\\_notices/scientificintegrity/Scientific\\_Integrity\\_Statement\\_of\\_the\\_Principal\\_Statistical\\_Agencies.pdf](https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/scientificintegrity/Scientific_Integrity_Statement_of_the_Principal_Statistical_Agencies.pdf)

<sup>15</sup> U.S. Census Bureau, Statement of Commitment to Scientific Integrity by Principal Statistical Agencies. [https://www.census.gov/content/dam/Census/about/about-the-bureau/policies\\_and\\_notices/scientificintegrity/Scientific\\_Integrity\\_Statement\\_of\\_the\\_Principal\\_Statistical\\_Agencies.pdf](https://www.census.gov/content/dam/Census/about/about-the-bureau/policies_and_notices/scientificintegrity/Scientific_Integrity_Statement_of_the_Principal_Statistical_Agencies.pdf)

<sup>16</sup> U.S. Census Bureau, Objectivity, December 2021, <https://www.census.gov/about/policies/quality/guidelines/objectivity.html>.

The Census Bureau has also undertaken coverage measurement programs which includes a post-enumeration survey since the 1990 Census in order to evaluate the accuracy of the Census count. These measures are used by the Census Bureau and its partners to identify areas to improve in terms of process and outreach to help ensure a more accurate count of the population. The Census Bureau also adapts their methodology to reflect the changing demographics of the country more effectively, shifting from a single race evaluation to a multirace-based approach for the 2010 Census.

Table 1: Summary of Net Coverage Error by Race and Ethnicity for 2010-2020 Censuses<sup>17</sup>

	2010 Census	2020 Census
Total Population	0.01%	-0.24%
Non-Hispanic White Alone	0.83%	1.64%
Black Alone or in Any Combination	-2.06%	-3.30%
Asian Alone or in Any Combination	0.00%	2.62%
American Indian or Alaska Native Alone or in Any Combination	-0.15%	-0.91%
on Reservation	-4.88%	-5.64%
Native Hawaiian or Other Pacific Islander Alone or in Any Combination	-1.02%	1.28%
Hispanic or Latino	-1.54%	-4.99%

<sup>17</sup> U.S. Census Bureau, 2020 Post Enumeration Survey Report, PES20-G-01, March 2022.  
<https://www2.census.gov/programs-surveys/decennial/coverage-measurement/pes/national-census-coverage-estimates-by-demographic-characteristics.pdf>

Table 2: Summary of Net Coverage Error by Race and Ethnicity for 1990-2000 Censuses<sup>18</sup>

	1990 Census	2000 Census
Total Population	-1.61%	0.49%
Non-Hispanic White	-0.68%	1.13%
Non-Hispanic Black	-4.57%	-1.84%
Non-Hispanic Asian	-2.36%	0.75%
American Indian on Reservation	-12.22%	0.88%
American Indian off Reservation	*	-0.62%
Native Hawaiian of Pacific Islander	**	-2.12%
Hispanic	-4.99%	-0.71%

\*=Included with non-Hispanic White for coverage estimates in 1990.

\*\*=Included with non-Hispanic Asian for coverage estimates in 1990.

#### **THE IMPORTANCE OF THE CENSUS AND AN ACCURATE COUNT**

Census data are critical for a functioning society, as they allow for the distribution of federal funds annually to states and Tribal Nations (as well as state allocations to localities), inform effective and efficient policy and planning decisions by businesses, policy makers, and nonprofit organizations, and are used to allocate political representation and to draw legislative districts at all levels. Without an accurate count of all communities, these decisions will not address the needs of the different segments of our country or uphold the constitutional guarantee of equal representation.

**Census-guided Federal Assistance.** Congress allocates significant federal resources to states, localities, and Tribal Nations, families, and nonprofits based on data from the census and the

<sup>18</sup> U.S. Census Bureau, 2010 Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States, Report G01, May 22, 2021. <https://www2.census.gov/programs-surveys/decennial/2010/technical-documentation/methodology/g-series/g01.pdf>

American Community Survey (ACS), the ongoing part of the census. The reason is obvious: prudent distribution of taxpayer monies relies on accurate data on where people live and work, as well as the quality of life in their communities. Decisions on where to build new schools and hire more teachers, where wider roads and more transit options are needed, where to offer programs focused on senior citizens and job training for veterans (not all of whom are citizens), and where access to health care must be expanded, all depend on accurate data from the census and the ACS, which itself relies on the foundation of an accurate count every 10 years.

A recent analysis of Fiscal Year 2023 federal spending shows that census data “inform the allocation of trillions of dollars in assistance funding from the federal government to states, districts, cities, and other localities. The census guides the geographic distribution of federal funding for health care, infrastructure, education, housing, veteran support, food for children and families, economic development, and much more.”<sup>19</sup> An assessment of the identified 371 federal assistance programs that used census data to geographically allocate their funds showed that more than \$2.24 trillion in federal dollars were allocated to state agencies, local governments, nonprofit organizations, educational institutions, companies, and households.

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<sup>19</sup> Sean Moulton and Janice Luong, Project on Government Oversight, *Census Matters: Why an Accurate Count is Essential to Funding Our Communities* (Oct. 28, 2025), <https://www.pogo.org/reports/census-matters-why-an-accurate-count-is-essential-to-funding-our-communities>.

**Federal Assistance Funds Geographically Directed by Census Data<sup>20</sup>**  
Distribution by Select State, Fiscal Year 2023

State	Medicare Total	Medicaid Total	All Other Programs	Totals
California	\$116,603,411,405	\$84,955,802,453	\$74,942,415,408	\$276,501,629,266
Colorado	\$13,225,060,718	\$8,632,878,469	\$8,820,755,106	\$30,678,694,293
Kentucky	\$13,917,964,620	\$13,536,874,309	\$8,246,521,230	\$35,701,360,159
Maryland	\$27,911,802,393	\$11,147,912,393	\$10,054,578,085	\$49,114,292,871
Missouri	\$19,154,556,755	\$12,758,757,801	\$10,576,352,286	\$42,489,666,842
New York	\$71,040,779,897	\$60,145,346,559	\$55,123,596,375	\$186,309,722,831
North Carolina	\$29,578,311,706	\$14,779,202,610	\$16,445,026,413	\$60,802,540,729
Ohio	\$33,376,320,805	\$24,160,463,102	\$19,814,221,943	\$77,351,005,850
Pennsylvania	\$42,943,343,318	\$28,552,616,433	\$22,603,573,091	\$94,099,532,842
Tennessee	\$20,713,368,114	\$9,533,007,555	\$10,323,578,953	\$40,569,954,623
Texas	\$71,098,669,158	\$38,075,142,448	\$43,615,406,742	\$152,789,218,348
Vermont	\$3,064,683,581	\$1,424,837,606	\$1,729,600,666	\$6,219,121,853
Washington	\$20,094,476,518	\$12,847,808,734	\$12,994,489,667	\$45,936,774,919
Wisconsin	\$15,944,832,743	\$8,157,431,823	\$9,011,188,966	\$33,113,453,531
Wyoming	\$2,779,038,571	\$464,314,250	\$1,416,120,585	\$4,659,473,406
<i>United States</i>	<i>\$592,842,090,995</i>	<i>\$1,037,100,000,000</i>	<i>\$17,692,100,290</i>	<i>\$2,240,093,187,193</i>

A fair and accurate census is imperative, as “miscounts in the decennial census can send billions of dollars to the wrong places, depriving communities of the resources they need for an entire decade.”<sup>21</sup> Accurate census data are also critical to ensuring decisions are made, and districts are drawn, that reflect and address the needs of each community.

<sup>20</sup> Sean Moulton and Janice Luong, Project on Government Oversight, *Census Matters: Why an Accurate Count is Essential to Funding Our Communities* (Oct. 28, 2025), <https://www.pogo.org/reports/census-matters-why-an-accurate-count-is-essential-to-funding-our-communities>.

<sup>21</sup> Sean Moulton and Janice Luong, Project on Government Oversight, *Census Matters: Why an Accurate Count is Essential to Funding Our Communities* (Oct. 28, 2025), <https://www.pogo.org/reports/census-matters-why-an-accurate-count-is-essential-to-funding-our-communities>.

### **THE BUSINESS CASE FOR AN ACCURATE CENSUS**

The private sector relies heavily on census and ACS data because these data are objective, highly accurate, and comparable across geographic regions and time. Businesses use census and ACS data to promote economic development, identify potential customers, understand audiences, and create jobs. Data from the census and the ACS provide corporations, small businesses, and entrepreneurs with the detailed social, economic, housing, and demographic data they need to gauge the sales potential of products and services, better understand the workforce, select new sites for businesses and services, evaluate performance of existing locations, and set strategies for growth.<sup>22</sup> In particular, the granular data that the ACS provides are essential for businesses to track market trends and make decisions about locating their products and services. For example, county-level population figures for women aged 16–34 years could be used to help determine the location for a maternity shop. A children's clothing retailer could use age and income data, combined with retail statistics, to select a location for a new enterprise that will succeed.<sup>23</sup> Real estate agents and industry groups like the National Association of Realtors (NAR) also use census and ACS data to benchmark their home sales data, gain insight about the trends of homeownership at the local level, and track changes in housing markets. Homebuilders analyze census statistics on family size, marriage or co-habitation trends, and birthrates to project the need for new housing of different sizes and types. All of these data help the housing sector meet the needs of communities and the people who live there now or in the future. Census data that are not accurate likely will lead to skewed decisions and investments, and ultimately business failures, especially for small businesses and entrepreneurs.

### **EXISTING AND POTENTIAL BARRIERS TO AN ACCURATE COUNT**

The Census Bureau's mandate to count all people is guided by twin goals of accuracy and confidentiality (which itself is necessary for accuracy). It achieves these aims through objective, scientific and evidence-based methods — methods that must be updated over time as the population grows and changes, and as new technologies emerge. While stakeholders have, appropriately, discussed ways to improve current methods, we should focus collectively and in a bipartisan way on addressing actual barriers to an accurate census count, such as the growing

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<sup>22</sup> The Census Project, "America's Essential Data at Risk: Preserve and Enhance the American Community Survey to Support U.S. Businesses," <https://thecensusproject.org/wp-content/uploads/2022/08/acs-business-1-pager-8-10-22.pdf>.

<sup>23</sup> National Research Council; Division of Behavioral and Social Sciences and Education; Commission on Behavioral and Social Sciences and Education; Panel on Census Requirements in the Year 2000 and Beyond; Barry Edmonston and Charles Schultze, Editors, "Appendix F: Business Uses of Census Data" in *Modernizing the U.S. Census*, The National Academies Press, 1995, <https://nap.nationalacademies.org/catalog/4805/modernizing-the-us-census>.

distrust in and fear of the federal government and insufficient funding for comprehensive, robust Get Out the Count activities as part of 2030 Census planning.

*Growing Distrust in and Fear of Government*

Robust participation (i.e., high response rates) is required for an accurate census.<sup>24</sup> Conversely, lower response rates will result in less accurate and timely statistics, which will only be useful summarized for the highest or largest levels of geography. This inaccuracy will also preclude the publication of useful, detailed information for lower geographic and subpopulation levels, with small and minority populations being underrepresented by official statistics, particularly when disaggregated. The Census Bureau has reported that Bureau-administered household survey response rates have been decreasing steadily over the last 10 years, with “primary drivers including anti-government sentiment, privacy concerns, challenges making contact with respondents, and respondent availability when contact is made.”<sup>25</sup> A Pew Research Center report before the 2020 Census found that 60 percent of people who were doubtful about participating in the census felt that way because of mistrust that the government would use the information properly and in accordance with the law.<sup>26</sup>

As we head into the second half of this decade, and move closer to the 2030 Census, mistrust in government is deepening. Recent studies and surveys have shown that trust in government continues to drop; a survey taken in Spring 2025 found that “only 33% of Americans trust the government, while 47% do not and 13% are neutral.”<sup>27</sup> Previous surveys have found that “3 in 4 said public confidence in the federal government was shrinking” (2018) and that “only 22%

<sup>24</sup> See Mathematica Policy Research, Background Paper: Declining Response Rates in Federal Surveys: Trends and Implications (Jun. 15, 2016),

<https://aspe.hhs.gov/sites/default/files/private/pdf/255531/Decliningresponserates.pdf>; Teresa A. Sullivan, *Coming to Our Census: How Social Statistics Underpin Our Democracy (and Republic)*, Harvard Data Science Review, Issue 2.1, Winter 2020 (Jan. 31, 2020), <https://hdsr.mitpress.mit.edu/pub/1g1cbvkv/release/8>.

<sup>25</sup> Carolyn Pickering, U.S. Census Bureau, Nonresponse In Household Surveys Conducted by the U.S. Census Bureau, Federal Economic Statistics Advisory Committee (FESAC) (Dec. 9, 2022), <https://apps.bea.gov/fesac/meetings/2022-12-09/Pickering-FESACNonresponse-in-Census-Surveys-12092022.pdf>. See also, U.S. Census Bureau, Current Population Survey (CPS) 2023 Modernization Efforts, <https://www.census.gov/programs-surveys/cps/about/modernization.html>.

<sup>26</sup> D’Vera Cohn, Anna Brown and Scott Keeter, Pew Research Center, Most Adults Aware of 2020 Census and Ready to Respond, but Don’t Know Key Details (Feb. 20, 2020), [https://www.pewresearch.org/wp-content/uploads/sites/20/2020/02/PSDT\\_02.20.20\\_census\\_full\\_report.pdf](https://www.pewresearch.org/wp-content/uploads/sites/20/2020/02/PSDT_02.20.20_census_full_report.pdf). See also, Hansi Lo Wang, NPR, How DOGE’s push to amass data could hurt the reliability of future U.S. statistics (Jun. 4, 2025), <https://www.npr.org/2025/06/04/nx-s1-5397191/us-census-bureau-labor-statistics-doge-data#:~:text=About%20a%20quarter%20of%20the%20people%20the,people%20who%20did%20not%20identify%20as%20Hispanic>.

<sup>27</sup> Partnership for Public Service, *The State of Public Trust in Government 2025* (Aug. 12, 2025), <https://ourpublicservice.org/publications/the-state-of-public-trust-in-government-2025/>.

of U.S. adults said they trust the federal government to do the right thing just about always or most of the time” (2024), with mistrust of the federal government being widespread in both parties.<sup>28</sup> Less than a third of U.S. adults (31%) have at least some trust in the federal government to act in society’s best interest, which is substantially lower than those who have some trust in charitable organizations (80%), state and local governments (50%), and businesses (43%).<sup>29</sup> This high level of mistrust in the federal government, in addition to the specific factors of the anti-immigrant climate and data sharing efforts by some federal agencies, will sow distrust in the confidentiality of the census, promote the belief among many residents that the Census Bureau will misuse the information they provide in a way that could harm them or their families, and, therefore, drive down participation rates, which in turn will drive up the costs of an accurate census. Accordingly, the Census Bureau takes its responsibilities to maintain the confidentiality of those who respond to the census very seriously, by ensuring that personally identifiable information is not shared with or divulged to any other agency of government at any level, law enforcement and regulatory agencies, private businesses, or any other entity for any purpose. That is what the law requires and why this pledge is key to convincing the American people to fill out their census forms.

*A Robust “Get Out the Count” Program Is Essential for an Accurate Census*

The Census Bureau is developing the 2030 Census operational plan, including efforts to reach out to all residents and households in relevant ways, especially those less likely to participate based on historical patterns. Effective practices from previous census operations include a robust language support program, comprehensive promotion and communications campaign, and an efficient but thorough door-to-door follow-up operation (called Non-Response Follow-Up, or NRFU). For example, a thorough 2020 Census language support program helped reduce barriers to answering the census for millions of people in every state whose primary language is not English, thereby improving the accuracy of the count everywhere. In 2020, the Census Bureau saw a seven percent increase in self-responses in non-English languages over the 2010 Census. That increase included self-responses in Spanish, representing 75.5 percent of Spanish-speaking Limited English Proficient households, and an increase of more than 1,500 percent in non-English, non-Spanish self-responses.<sup>30</sup>

<sup>28</sup> Claudia Deane, Trend Magazine, Americans’ Deepening Mistrust of Institutions (Oct. 17, 2024), <https://www.pew.org/en/trend/archive/fall-2024/americans-deepening-mistrust-of-institutions>.

<sup>29</sup> Gallup, Federal Government Least Trusted to Act in Society’s Interest (Aug. 19, 2025), <https://news.gallup.com/poll/693446/federal-government-least-trusted-act-society-interest.aspx>.

<sup>30</sup> U.S. Census Bureau, 2020 Census Language Program Operational Assessment (Sept. 30, 2025), <https://www2.census.gov/programs-surveys/decennial/2020/program-management/evaluate-docs/EAE-2020-language-program.pdf>.

Regarding the significance of door-to-door follow-up to reach unresponsive households, it is important to understand that about a third of all households wouldn't be counted without this vital, if more costly, operation. Along these lines, and even more worrisome, a provision in the House version of the FY 2026 Commerce, Justice, and Science Appropriations bill (not yet numbered) would limit contact with households to two "inquiries." That means census counting would have stopped in 2020 *when only about a third of all U.S. households had been enumerated* — an unacceptable outcome.

Additionally, Commerce Secretary Lutnick's disappointing decision earlier this year to terminate the Census Bureau's 2030 Census Advisory Committee, Census Scientific Advisory Committee, and National Advisory Committee on Racial, Ethnic, and Other Populations has left the Bureau without vital avenues for public input and feedback. Elimination of these long-standing panels also has reduced transparency into the census planning process, as well as the ability to take advantage of knowledgeable stakeholder perspectives on any planned changes. The loss of its advisory committees is a major setback at a pivotal moment for the Bureau, both in its planning for the 2030 Census and its extensive efforts to streamline and modernize other data collection activities to improve cost-efficiency throughout.

To ensure a fair and accurate 2030 Census, it is critical for the Census Bureau to share information with and solicit input from stakeholders, particularly those representing undercounted communities. However, the Bureau's engagement efforts have not always yielded meaningful opportunities for input from stakeholders to the detriment of our shared goals of ensuring that all communities are counted fully in 2030 and measured accurately in the American Community Survey. The loss of the Census Bureau's advisory committees will only further undermine these mutual goals.

We believe there is a real opportunity at this critical juncture in the 2030 planning cycle to strengthen how the Census Bureau obtains input from stakeholders, helping to create a stronger foundation for a complete count in 2030 and improved socio-economic and demographic estimates from the ACS. To that end, we call on the Census Bureau to engage meaningfully and transparently with stakeholders, leverage opportunities for stronger partnerships with national, state, and community-level stakeholders, and seek new ways to solicit expert input on its preparations for the 2030 Census and other data collection programs.

To ensure our mutual goal of an accurate count, Congress should focus on monitoring and conducting oversight of Census 2030 planning and preparation activities, providing sufficient resources for an accurate count everywhere — where all communities are counted accurately — and engaging with interested stakeholders and the Census Bureau on how to achieve its goals and spend taxpayer dollars wisely.

**CONCLUSION**

While there has never been a census that has met the heavy burden of counting fairly and accurately all communities in the United States, the Census Bureau conducts its operations and activities according to long-standing principles of integrity and guided by objective, scientific expertise. Its work is grounded in the constitutional mandate to count every person living in the country, maintaining strict confidentiality of all personal data as the law requires, and adhering to well-researched, sound scientific methodologies to produce the vital data about our population, communities, and economy that Americans deserve, expect, and need. Deviating from any of these lodestars would destabilize a fundamental cornerstone of our democracy.

Mr. ROY. Thank you for your opening statement, Mr. Yang.

We will now proceed under the five-minute rule with questions. The Chair recognizes the gentleman from North Carolina for five minutes.

Mr. HARRIS. Thank you very much, Mr. Chair, and thank you for holding this hearing on this very important matter.

Thank you all on the panel for your presence today and for your expertise that you bring to the table.

I want to take just a moment to talk about the importance of including a citizenship question in our census. I want to come to you, Mr. Miller. Should the census include a citizenship question?

Mr. MILLER. Yes, I would argue that it is constitutionally mandated in terms of what the census is seeking to produce from a constitutional perspective. Knowing citizenship or residency status, lawful permanent residence status or otherwise, is important in understanding how all the total population fits into what you must do with that data.

Mr. HARRIS. Thank you. Has the census ever included a citizenship question?

Mr. MILLER. That's a good question historically. Anyone—I think it has historically but has not recently. They tried to get that going last time and ran into APA violation issues. It was not included.

Mr. HARRIS. A followup to that, because I think it has—and why was the question removed? That would be the real question here.

Mr. MILLER. Well, are you asking me to speculate? I suspect that it was an attempt to try to increase population levels in ways that would help certain States, because they're now counting illegal immigrants for the purposes of apportionment and illegal immigrants and legal immigrants for the purposes of redistricting.

Mr. HARRIS. OK. What are some of the effects of leaving a citizenship question out of the census?

Mr. MILLER. If you don't know accurate citizen status, then if your, if your argument is that, constitutionally, you should only be creating political districts with those that are here, lawful permanent residents and citizens, or just citizens, then you need to know that data to create political maps that reflect that dataset, if that's your objective.

Mr. HARRIS. Sure. The result of our census not only controls how Congressional and State districts are drawn, but it also directs the flow of Federal dollars. We talk about Medicaid, highway funds, education, and SNAP benefits, all use population and demographic data, demographic data from the census, and to award funds. When we don't distinguish between citizens and noncitizens when determining our population, it incentivizes States to mass import illegals through sanctuary policies.

We just went through the Big Beautiful Bill or Working Families Tax Act, and we made an effort to ensure illegals are not accessing welfare programs. I'm worried that, when we allow them to be considered for purposes of determining benefit formulas, it undermines that purpose.

Mr. Miller, do you agree that including illegal aliens in population totals for Federal programs undermine the recent reforms to prohibit illegal aliens from taking benefits away from Americans?

Mr. MILLER. Certainly, there's two questions here: Should you count them, and then, how should that data be used, and for what purposes?

Certainly, if you are counting illegal aliens and you don't know their location, and the location of those illegal aliens, because of differential privacy, is being moved around, that would have significant impacts on every single Federal funding formula, assuming that memorandums of understanding are not being properly submitted to the census to ascertain the accurate information on ways to disperse those Federal funds.

Mr. HARRIS. Agreed. I would submit that, when we allow illegal aliens to be counted toward the total population for the purpose of determining welfare award numbers, it distorts the proper amount that should be given to that community, and that, ultimately, puts a further strain on, on the Federal budget.

Mr. Mayfield, let me ask you really quickly in the last moment I'm very grateful to be serving in the House of Representatives, which is a democratic body, but I worry that the errors in the 2020 Census undermine this institution and its purposes, which is to represent the American people. Can you, Mr. Mayfield, explain how the way in which the 2020 Census was conducted undermined the representation of the American people?

Mr. MAYFIELD. Thank you for that question, Congressman.

It's important in asking that question to make a distinction between two things: The gathering of the data, the collection, and the processing of that data.

The gathering of the data by the census in 2020 was exemplary. As your colleague Mr. Raskin pointed out, the COVID pandemic made things extremely difficult. There were also hurricanes that affected, in particular, Alabama and Louisiana. The collection was delayed.

The collection was tied to the most successful census in history. We had a 99.98 household contact rate. I say, "we"; I had nothing to do with that; the Bureau did.

There were three primary reasons for that success:

(1) President Trump insisted that the census follow regular order and not make shortcuts in the census.

(2) The Census had done a good job over the previous decade implementing technology and cutting out many, many layers of needless followup, including using administrative records, such as the Postal Service.

(3) As you may recall, the Census lockdown day was March 18th. As chance would happen it, Census Day is April 1st. Virtually, everyone was in their home. Once they got done watching Tiger King, they decided to fill out their census forms.

The problem that the people here have spoken here today comes in the Census's data processing. The largest problem was differential privacy, which, as several speakers have alluded, moves people around.

In the modeling prior to the census that was done in the University of Virginia under a Census contract, it, basically—I'm summing this up—moved people from urban areas to rural areas, where they did not exist. You can all discern from that, if that's

true, what the political modeling would look like. Another major problem in—

Mr. ROY. Mr. Mayfield, will you wrap this up?

Mr. MAYFIELD. Sure.

Mr. ROY. We're a little over time.

Mr. MAYFIELD. Grouped quarters were a problem because colleges, in particular, and other large quarters were double-counted. The Census went back and changed the data to assume that people—where they thought they were instead of just where they were when they answered the census.

Mr. HARRIS. Thank you. I'm out of time, Mr. Chair. I yield back.

Mr. ROY. Thank you, Mr. Mayfield. Thank you to the gentleman from North Carolina.

I'm now going to recognize the gentleman from Maryland, the Ranking Member of the Committee, Mr. Raskin.

Mr. RASKIN. Thank you kindly, Mr. Chair.

Mr. Yang, first, Section 1 of the 14th Amendment states that, "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States..." Then, in Section 2, it says that, "Representatives shall be apportioned among the States according to their respective numbers, counting the whole number of persons in each State..."

Obviously, the framers of the 14th Amendment understood the difference between citizens and persons, and they used "citizens" when they meant citizens; they used "persons" when they meant persons.

Doesn't that pretty much settle this bizarrely lingering question of whether or not we should be counting all persons or just citizens, when we perform the census?

Mr. YANG. That's absolutely correct. Thank you for that question. If you look at the text of the Constitution and the 14th Amendment, it counts all persons in the State. Frankly, some of the history, both of the 14th Amendment and going back to the founding of the Constitution, illustrate that they wanted to count the entire population and not simply voters, not simply landowners. Obviously, at that point, women could not vote; obviously, children could not vote. They want to include the entire population.

Frankly, this debate also came up in 1929 during what was called the Apportionment Act. That was the only time in Congress at the 1920 Census where we did not have apportionment. In that debate, part of the debate was whether certain people should be counted. During that debate, at the end of the debate, everyone decided that it is still based on all population, but during that debate, some argued that people should not be counted. Specifically, one Representative argued that the—a counting, it should count only voters or citizens because, otherwise, it would include the thousands of unnaturalized aliens.

Another Representative said that they didn't want to count thousands of Mexicans and Oriental aliens, and that those people would end up somehow giving extra seats to California in that particular case.

When they talk about Oriental aliens, I will take that personally because at that time there was a Chinese Exclusion Act, which meant that Chinese were not citizens. Nevertheless, during that

time, it was settled that it should still be all population for purposes of the census.

Mr. RASKIN. Right. Of course, at various points in American history, the determination to count just voters would have excluded women, Native Americans, today children still, right?

Will you explain this controversy around differential privacy which seems to be a new one? Will you explain what that means, what the practice is, and then, what your response is to your fellow panelist there, and specifically, to address Mr. Mayfield's last point that: I think this is inflating the population of rural communities by falsely attributing people from urban communities to rural communities, which would seem to me to be inflating the numbers in Red districts that—

Mr. YANG. No. Thank you for asking me for that question. Again, the starting point is that differential privacy was not used at the State level.

Mr. RASKIN. It is for—

Mr. YANG. Sure. Differential privacy is, basically, the notion that you will inject, some call it, "statistical noise," but masking data in the, the census data. Typically, you would take a certain piece of data and transfer it to another individual, so that you can't identify individual A. There's concern with Big Tech now, with big data. Individual A, if you have enough information, both from the census and what is available on the web you might be able to identify that person. "Oh, that must be so-and-so who lives on this block."

The concern was we needed to devise a system that would take some of the data, switch it around, so that you can't identify that individual. Again, it was not used at the State level. Any argument that somehow a State got less seats or a State got more seats because of it is just not—

Mr. RASKIN. Where was it used?

Mr. YANG. It was used certainly at the lower levels, most—so—

Mr. RASKIN. Do you mean at the county or municipal levels?

Mr. YANG. Right. At what's called a Census Block level, Census Tract level, it was used there. I agree that there could be concerns about how you use that, but at the end of the day, everyone that's been doing redistricting still uses that data that's available. What's it called? PL 90.

Mr. RASKIN. When the Trump Administration administered that or implemented that in the 2020 Census, was that the first time it was ever used?

Mr. YANG. Yes, that was the first time that it was ever used.

Mr. RASKIN. Uh-hum, OK. Mr. Mayfield, was your point that we shouldn't be using that anymore? Even if it doesn't affect Congressional reapportionment, it affects local apportionment in city council races, county council, things like that?

Mr. MAYFIELD. To clarify, Congressman, it affects all redistricting within a State. My friend's point is that, if Indiana has a population, say, of three million, that's probably correct within the, the normal parameters of accuracy. How Indiana's nine Congressmen—I apologize if I've got that wrong—are allocated is going to be incorrect and down to the legislative, district, and town levels. That error will permeate within each State below the State level.

When he refers to “apportionment,” he means the number of Representatives that are allocated to each State after the census.

Mr. RASKIN. With your indulgence, Mr. Chair, if I could just ask him to finish this point.

Why was this differential privacy thing adopted? What problem was it addressing, and what would the alternative be to the problem of not being able to get in particular people’s houses if they don’t open the door, or whatever?

Mr. MAYFIELD. Sure. Well, differential privacy has nothing to do with collection. It has to do with ensuring that Section 9 of Title XIII is adhered to. In that, Congress has prohibited the release of personal information based on using the data.

In other words, we don’t release the raw data, the short form that everyone fills out. That is very basic. There are basically nine questions: Name, phone number, address, racial characteristic, your relationship to the household head, and your gender. The only real personal information on that is name, address, phone number.

The census has always kept the granular data out of the public eye. You can’t get census data that’s actually collected.

In the past three censuses, 2010, 2020—sorry—2010, 2000, and 1990, the Bureau used what’s called “data swapping.” Imagine you have a block. There are five houses on each side of the block. Because the smallest unit of data that is publicly released is at the block level, the Bureau scrambles that data. You don’t know if there’s a 20-year-old living on this side and a young daughter living on this side.

That was always used. There was never a problem with it. No one outside of the people driving differential privacy thought there was a problem, and they advocated for continuing to use that method.

Mr. ROY. I thank the Ranking Member for his question, and I’m going to use a little prerogative, because there’s some technical stuff here, particularly when it’s a nonpartisan point. I don’t mind it going over on either side, because this differential privacy is highly complex, and I do think this Committee, on a nonpartisan basis, we need to understand it and understand it fully. I’ll try to allow some of that explanation, as necessary, on both sides, where it’s appropriate.

With that, I would be recognizing the gentleman from California, my friend, Mr. McClintock.

Mr. MCCLINTOCK. Thank you. Mr. Rodriguez, if the 14th Amendment actually confers automatic citizenship to anyone who’s born here, as the Democrats contend, it seems to me it would have said, “All persons born or naturalized in the United States are citizens of the United States.” Period. That’s pretty clear.

As you know, that’s not what it says. It says, “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States...” What does that mean?

Mr. RODRIGUEZ. Well, the courts have interpreted “subject to the jurisdiction thereof” in other contexts for purposes of due process or equal protection, and it’s certainly been broader than naturalized or legal residents. It’s still—

Mr. MCCLINTOCK. Has the Supreme Court ever rendered a decision on whether it applies to those who are illegally in this country who have never sworn allegiance to it, and have defied its laws to be here in the first place, and under its laws, are subject to deportation as soon as encountered?

Yes, I realize the *Ark Decision* was rendered 127 years ago, but that applied to legal immigrants who accepted the jurisdiction in the United States by obeying our immigration laws and who had taken up legal permanent residence, subject to a treaty ratified by the Senate.

Mr. RODRIGUEZ. Right. There seems to be no directly on-point Supreme Court decision that says that the children of illegal immigrants are or are not citizens.

Mr. MCCLINTOCK. Perhaps we're due to have that at some point decided by the Supreme Court or decided by the people through constitutional amendment or statute. Am I correct?

Mr. RODRIGUEZ. It does seem like it will be heard in the near future.

Mr. MCCLINTOCK. Mr. Mayfield, it seems to me that a census is neither science nor statistics. A census is counting real people. People have names, dates of birth, addresses, and other identifying information. How can it possibly be that we include in our census any count without names and such identifying characteristics? It seems to me, if you don't have a person, they shouldn't be counted in a census of people. How did we deviate from this simple principle?

Mr. MAYFIELD. If I understand your question, Congressman, the first aspect of the census is voluntary compliance with it. Every American is required to answer it by law, but the deal that Congress has made is that this information will not be disclosed. In fact, they cannot even be subpoenaed by a court. That's just how tight the information is kept.

Approximately 67 percent of Americans voluntarily filled out the short form, which is: What is your household data as of April 1, 2020? For the remaining third of the country, the census endeavors to learn that information. It does so—

Mr. MCCLINTOCK. You knock on the door. You get a count of the people who actually live there. You enter them on the Census Register. That's been done since time in memoriam. I'm reading now of statistical errors that shifted the—a portion of Congressional seats away from Republican States toward Democratic States. Now, how can that be if we're actually counting real people?

Mr. MAYFIELD. It's important to remember, Congressman, that several Members have alluded to so-called errors after the fact. The Census does what's called the Post-Enumeration Survey. That is modeling. That is statistical guess, is what it—

Mr. MCCLINTOCK. Well, how did we reach a point where we're guessing in the census? Either you're a real person or you're not. If you're not, you don't belong in the census. If you are, we will count you.

Mr. MAYFIELD. As Justice Scalia pointed out in *Department of Commerce v. The House of Representatives*, it's imperfect science enumeration, but it's better than anything else we've got.

Mr. MCCLINTOCK. It's not. It's not science; it's a simple matter of counting real people.

Mr. MAYFIELD. Well, Congressman, there are many people who are very hard to reach. For instance, homeless people, which the Census works very hard to count. There are people who won't allow—

Mr. MCCLINTOCK. You work very hard to find them, but if you can't find them, you don't make them up. That's not a real census. That's guesswork. Mr. Miller, any thoughts?

Mr. MILLER. Yes. It is extremely important that the data that is collected, at least the sensitive, Top-Secret version of this data, be highly accurate and that we don't just invent people. Because former processes have just swapped people. The new process literally deconstructs a person and every characteristic, and then, just in the aggregate, creates them elsewhere in a whole bunch of different profiles all over the map. It's a complete mess.

There's all sorts of constitutional problems with the way we've done it that have impacted redistricting, and there are some arguments that, if you don't want to count illegal aliens for the purposes of apportionment, because your argument is that they are not under the political jurisdiction of the United States of America at the time of birth, that this would impact apportionment because, if you're using differential privacy, you may not know—we don't know what they're doing with that characteristic data. Is it actually adding up all the way to the top accurately or not?

The biggest problem with all this is we assume it is. It may not be impacting apportionment, but it's all Top Secret. We don't have eyes on it. We can't verify it. No one can go right now and say that, 100 percent, yes, all this data, even the characteristic data, let alone the population data, is accurate. That's a huge problem.

Mr. ROY. I thank the gentleman from California. I will now recognize the gentlelady from Washington, Ms. Jayapal.

Ms. JAYAPAL. Thank you so much, Mr. Chair.

I think we all agree on the importance of accuracy in our census results. I am concerned about some of the actions that are being advocated for are actually undermining some of that accuracy.

I want to turn to the citizenship question first and put aside the Constitution, which is a strange thing to say in the Constitution Subcommittee, but to not necessarily look at what the Constitution says, specifically, persons rather than just citizens, and actually talk about how adding a citizenship question would make the census less accurate.

I'm going to come to you Mr. Yang because there is a lot of data that shows that communities of color, including American citizens, have been historically undercounted. This undercounting question is directly related to what might happen if a citizenship question was added to the census.

Can you speak to how adding a citizenship question actually hurts us in terms of accuracy and increasing undercounting?

Mr. YANG. Thank you for that question, Representative.

The bottom line is we want an accurate census. All the studies that we have seen, included by the Census Bureau, show that the addition of a citizenship question will undermine the accuracy of

the census, not only for immigrants, but for all Americans, because there's a hesitancy about how that data is going to be used.

That was documented, especially and even going up to the 2020 Census. Even after the Supreme Court decision that said that we cannot have a citizenship question, there are still people that were concerned about whether that question appeared. That is part of the reason why many believe that Hispanic Americans were undercounted by over five percent.

The other thing that we should remember about this, actually, there is a citizenship question on what's called the long form, that American Community Survey of the census. Now, that is a form that contains 50 questions. It has been tested in terms of how we can do that in a way that captures the data accurately. Again, the bottom line is accuracy.

Ms. JAYAPAL. Let me go to the question of undercounting. If there is undercounting, substantial undercounting, how does that undercount harm American citizens in terms of how the census is utilized?

Mr. YANG. Well, the undercount affects American citizens, then, because we will have areas where there's more population than was expected, even though the roads are not wide enough, even though the schools are not big enough, even though the public services are not big enough.

Let's be clear, right, highways, public services aren't dependent on immigrant status. It's dependent on the actual residents that live in that community.

Ms. JAYAPAL. Give me some of the other reasons, for anyone that's listening to this debate and trying to understand it, for why noncitizens should be counted. Again, we're clear about what the Constitution says, but go ahead.

Mr. YANG. Right. Again, why noncitizens should be counted is because they are part of the entire community that we're talking about. First, we break it down in terms of noncitizens. Obviously, that would include people that are legal permanent residents. That would include people that are refugees. It includes a large body that participated in that community, that deserves to have a voice in that community, and nevertheless, has not yet attained this notion of citizenship.

Historically, that's been part of the debates that we've had, whether it was for the 14th Amendment, the original founding of the Constitution, or as I pointed out, in the 1929 Apportionment Act. We've always agreed with the general principle that we should represent the entire population and not just a small subset of that population.

Ms. JAYAPAL. Yes, that it's very real that we have many, many mixed-status families in this country. If you insert fear into one group of people, that certainly affects the entire family's trust in government.

Mr. YANG. I appreciate that you bring up the notion of mixed-status families. What that means is you have a family that has some citizens, some noncitizens, maybe even someone that is undocumented. In that situation, that citizen in that household would not get the services that they would be entitled to because of the fact they are not being counted correctly.

Ms. JAYAPAL. I wanted to go back to differential privacy, because, as the Chair knows, this is an issue where we all have a lot of concerns about surveillance. I guess I want to understand why we would want to eliminate that ability to really mask the characteristics, so we can get accurate assessments. I wonder if you want to speak to that.

Mr. YANG. Yes, the bottom line here is, how do we guarantee confidentiality for the community, so that the community can trust that, when they are responding to the census, their identity will not be made public?

The reason this differential privacy policy was developed was because of the advent of big data.

Ms. JAYAPAL. Uh-hum.

Mr. YANG. Now, you are able to get so much more information about individuals off the internet.

Ms. JAYAPAL. Uh-hum.

Mr. YANG. That what might have been unidentifiable before by simply swapping data at that block level is not going to be enough. That is why this was developed. I agree that we all have concerns, we've asked questions about how this is implemented, and perhaps some fine tuning is appropriate, but that is a proper source of inquiry. The notion of disregarding it altogether I think would—

Ms. JAYAPAL. What would be the fine tuning?

Mr. YANG. This is where we all need to continue to work with the Census Bureau to see what worked and what didn't. The Census Bureau, when they said that they were announcing this differential privacy policy, among other things, they said that, for 95 percent of the jurisdictions, they expect an error rate of under five percent. In that context, then you start to understand, OK, this data at these levels still should be accurate.

Ms. JAYAPAL. Uh-hum.

Mr. YANG. Now, I would agree we need to test that and to see where those five percent did not work; what that actually looks like. I think that's an appropriate area for inquiry.

Ms. JAYAPAL. Great. Thank you. Thank you, Mr. Chair.

Mr. ROY. I thank the gentlelady for her questions. I will now represent—Mr. Onder?

Mr. ONDER. Thank you, Mr. Chair. I couldn't agree more with President Trump that we need to restore the integrity of our census, and that this begins with refusing to count illegal aliens in our census. For too long, sanctuary States have openly defied Federal laws and been rewarded with more political power, more Congressional seats, and more influence. This is unacceptable and it undermines the very foundation of equal representation.

Meanwhile, States like Missouri that I represent, that follow and respect the law, have a diluted voice in Washington, and not because we have done anything wrong, but because other States have chosen to disregard Federal immigration law, and they benefit politically by doing so.

Mr. Rodriguez, doesn't this mean that sanctuary policies, if we count illegal aliens in the census, have the effect of giving Democrats an unfair advantage in Congress, in the Electoral College, and in Federal funding?

Mr. RODRIGUEZ. To some extent. I don't think it's entirely partisan, though. There are Red States like Texas which also have disproportionate levels of illegal aliens in their State, and they also benefit—

Mr. ONDER. Right.

Mr. RODRIGUEZ. Sure, California has been the State that has benefited most from this policy.

Mr. ONDER. Yes, but Texas does not have a sanctuary State policy, of course.

Mr. RODRIGUEZ. Yes, of course.

Mr. ONDER. If illegal immigrants are excluded from apportionment counts, wouldn't we see some shift in political power back to States that follow the law?

Mr. RODRIGUEZ. Yes.

Mr. ONDER. Yes, because census results also determine how, literally, trillions of dollars of Federal dollars are distributed, are my constituents in Missouri subsidizing sanctuary States with large illegal alien populations?

Mr. RODRIGUEZ. They likely are.

Mr. ONDER. OK.

Mr. RODRIGUEZ. It's important to note that, under Federal law, the Personal Responsibility and Work Organization Reconciliation Act of 1996 prohibit illegal aliens from receiving Federal benefits. Calculations for Federal benefit purposes that are based on illegal alien populations are wrong under the law.

Mr. ONDER. Right. Again, we know that, looking back on the 2020 Census, it is clear the Census Bureau has admitted that there were errors in States, in the counting of States, and five of the six States that were undercounted were Red States and seven of the eight States that were overcounted were Blue or swing States.

Mr. Miller, can you explain how these inaccuracies in the 2020 Census occurred and what can be done differently in the 2030 Census?

Mr. MILLER. The Census Bureau would argue that these were difficulties that they encountered due to COVID, and that this was kind of a historical unprecedented event that occurred during a census, at least in modern times, that I'm aware of.

Mr. ONDER. Excuse me if I interrupt. It seems like everything is blamed on COVID.

Mr. MILLER. Right.

Mr. ONDER. Supply chains are blamed on COVID; educational/lack of educational is blamed on COVID; workforce, COVID.

What specifically—how did fighting this virus lead to these inaccuracies?

Mr. MILLER. Well, that's why it just doesn't make much sense to me, because the States that were undercounted were, generally, more open than the States—

Mr. ONDER. Where people wearing gloves and masks and not able to be out properly?

Mr. MILLER. Right.

Mr. ONDER. I don't know.

Mr. MILLER. Yes, the States that were overcounted were the ones that were locked-down and closed, more so, I just don't understand

the whole COVID logic. I'll take them at their word, but it's certainly a strange outcome.

Mr. ONDER. Yes. Maybe everyone at the Census Bureau working from home and not actually out counting persons.

Do we really know the full extent, Mr. Miller, of the 2020 Census, the census inaccuracies? If they admit to this, is—

Mr. MILLER. No, they have admitted to major miscounts.

Mr. ONDER. Yes.

Mr. MILLER. We do not know the extent to which differential privacy has had an impact, because the TIGER file that all this exists at the Census Bureau is Top Secret. Only a few people have access to it. This is an oversight problem that we really need to get some data statisticians in there to really analyze, with clearance, to analyze the impacts. Because whether it's urban to rural or rural to urban, there has been a lot of population movement, and I've seen studies arguing both sides of this. There are big problems with this on a variety of fronts.

Mr. ONDER. Again, remind us what's the alternative to the differential privacy scheme?

Mr. MILLER. Well, there can be a lot of these. IFMS has a really good analysis on how to address this. Past practices have used swapping, limited swapping.

Mr. ONDER. Right.

Mr. MILLER. One solution is just turn off characteristic data until you get to a statistically significant level—

Mr. ONDER. Level where you can—

Mr. MILLER. —of numerical data available, but turn off all the characteristic data until you're up at the census tract or county level. That way, it's really hard to reverse-engineer the algorithm with population numbers that are strong.

Mr. ONDER. It makes perfect sense. Thank you so much. I yield back.

Mr. ROY. I thank the gentleman.

I will now represent the gentlelady from Vermont.

Ms. BALINT. Thank you, Mr. Chair. Thank you to the witnesses. I appreciate your time.

This is a hearing about the census, so, essentially, a hearing about counting people, or put another way, determining who counts and who doesn't.

President Trump has made clear that he feels that birthright citizens is not constitutional. He feels that noncitizens should not be counted in the census. He has made clear that he views the 2020 Census as illegitimate.

The truth is the President can feel any way he wants; the courts have spoken. Birthright citizenship is the law of the land. The census counts for everyone, and the 2020 Census was as accurate as the 2010 Census.

Here we are again in a hearing to make these claims, these nonsensical legal theories more legitimate by holding hearings about this. More broadly, this hearing props up baseless legal theories that undermine the census and threaten our representative democracy.

I want to associate myself with the remarks of my Democratic colleagues. I would like to take my time to go in a little bit dif-

ferent direction here. I want to spend my time getting to the heart of this question of who counts and who doesn't count in the eyes of this administration. Who is seen as a real American and who is not?

Investigative report by *ProPublica* has found that more than 170 American citizens have been detained by immigration agents. They've been dragged; they've been kicked; and they have been detained for days at a time. These are U.S. citizens. They are our fellow Americans. Top Trump Administration officials keep denying that U.S. citizens have been arrested or detained at all in the immigration raids that are taking place across this country.

Department of Homeland Security Secretary Kristi Noem has repeatedly falsely claimed that no American citizens have been arrested or detained. There are two reasons that we have that she could be doing this:

- (1) That she is blatantly lying to the press. That is one option.
- (2) That she doesn't know what is happening under her own leadership.

Either option is deeply disturbing to me.

We have so much evidence that what Noem has been saying about this is untrue. Many news outlets have confirmed these arrests and have spoken directly to U.S. citizens who have been arrested or detained by immigration agents. They have gathered these disturbing stories about how our own citizens are being treated by this administration. We have the evidence.

There's the case of American citizen George Retes, an Army veteran who was pulled out of his car by Federal agents who were raiding a farm North of Los Angeles. In his words,

They sat me down on the dirt with my hands zip-tied behind my back. I told them I was a citizen. I told them I had an ID. They didn't care. They never asked me for it.

This U.S. citizen was held for three days before finally being released. He was never charged with a crime. He's just one of many U.S. citizens that we can document who have been detained or arrested. Again, we have the proof. Secretary Noem continues to spread false information.

Then, there's the case of Jason Brian Gavidia. Jason is a U.S. citizen who worked at a tow truck yard when Border Patrol agents stormed in. Jason was handcuffed, as he pleaded with the agents. He said, "Let me show you my ID. Let me prove my status." He said, "They didn't care. All they cared about was the fact that I was Brown and I was in the wrong place at the wrong time." That's not right. We're in America. That's not right.

The point is that the only people who seem to count as Americans to this administration are the people who look American. Any of us sitting here in this room, regardless of party, would be shocked, would be outraged, would express righteous indignation if we were detained based on our physical appearance or on our profile alone. Regardless of what we believe about this President, I would hope that we would agree we would howl at our due process rights being denied.

Mr. RASKIN. Well, would the gentlelady yield for a quick question?

Ms. BALINT. I will. I will.

Mr. RASKIN. What does it mean to “look like an American” in 2025?

Ms. BALINT. Yes, thank you very much. It seems clear to me that looking like an American is somebody who does not have Brown or Black skin, and sounding like an American is someone who does not have an accent. That seems like that’s been established.

I just want to end with this: There is nothing more important than a person’s liberty, nothing. I would hope that we can all agree on that.

We should all be standing up to our government when it is arresting and detaining citizens illegally and then lying about it. Citizenship in this country is not based on the color of your skin; it is not based on the accent that you have. Based on the actions of this administration, I’m not confident that it believes this, and I find this deeply chilling.

Before I yield back, I have several unanimous consents that I would like to enter into the record.

First, *ProPublica*, “Immigration Agents Have Held More Than 170 Americans Against Their Will.”

Second, “NPR Fact Checks Kristi Noem on ICE Detaining U.S. Citizens.”

Third, an article in *The Journal of Policy Analysis and Management*, “Citizenship Question Effects on Household Survey Responses.”

Fourth, an October 2015 report by *The Congressional Research Service* entitled, “Apportioning Seats in the U.S. House of Representatives Using a 2013 Estimated Population,” concluding that excluding noncitizens for apportionment purposes likely requires a Constitutional Amendment.

I yield back.

Mr. ROY. Without objection, those will be entered into the record. I will now recognize the Chair of the Judiciary Committee, Mr. Jordan.

Chair JORDAN. Thank you, Mr. Chair. Mr. Mayfield, we’ve asked about it before, haven’t we? We’ve asked the citizenship question on this census before, haven’t we?

Mr. MAYFIELD. That’s correct, Congressman, many—

Chair JORDAN. From 1820–1950, we asked that question. That’s 130 years. From 1970–2000, another 30 years. One hundred fifty years, we asked the question.

Mr. MAYFIELD. That’s correct.

Chair JORDAN. The previous speaker just said, if we ask the citizenship question, it’s going to threaten democracy. Well, it didn’t hurt democracy for 150 years. In fact, I would bet if you—I’ll use my—I’ll just our district. You can go to Urbana, Ohio, our hometown. I bet if I went to Urbana, Ohio; I walked to the post office—or walked anywhere, any store. I walk in. I see someone I know:

Chair JORDAN. “Mr. Smith, do you think on the census—you know what the census is, of course?”

Mr. SMITH. “Oh, sure. Every 10—every so often, we find out how many—we count the number of people in the country.”

Chair JORDAN. “Mr. Smith, do you think, when we’re counting the number of people in this country, it’s appropriate to find out how many are citizens?”

What do you think he would say? What do you think the average person would say?

Mr. MAYFIELD. I suspect the answer would be, "Yes, sir."

Chair JORDAN. It would not only be yes; they would say, "Well, aren't you already doing that? That's pretty stupid if you're not."

That's where the American people are. Everyone's for counting it. We did it for 150 years of our 250 years as a country—or since we declared independence, 249 years, almost 250 years now. We've done it for most of our history. Everyone thinks we're doing it. Everyone thinks we should do it, except Democrats in Congress.

It was interesting, too, in Mr. Yang's testimony, he said, "Oh, if we ask the question, we'll get inaccurate counts." Then, he went on for the rest of his five minutes and talked about all the inaccuracies in the recent censuses where we're not asking it—undercounts, overcounts, rural America, Hispanic Americans, pointing out all the problems, and we're not asking the question.

Somehow, if we ask it, oh, it might get worse because we have some study. He even said, people thought it might be on the census questionnaire, and it wasn't, and that hurt the count—which makes no sense to me. It wasn't a question.

Think this is so darn simple. Count the persons. That's what the Constitution says. Count the number of people, and while you're doing that, find out how many are citizens. What's wrong with that? It might actually help policymakers when we're determining policy if we know those two numbers. That's all we need to focus on.

I'll go to Mr. Miller, if he's got any comments about what I commented on.

Mr. MILLER. On the last part, I absolutely agree. There is some question on who to count. I think that this, if you get into it technically, answer is you can count everyone. You just need to know certain population numerical data, then, residency status, because that could bleed into policy questions later. That that's an important distinction to know, that you can use different datasets within the totality of that data for different purposes.

Chair JORDAN. Of course, that's useful information for policymakers. That's why we do it that way. I get that.

Let me ask you this question, Mr. Miller: Do you think asking a citizenship question on the census is any way a threat to democracy?

Mr. MILLER. I do not. I think it's constitutionally mandated if you really—

Chair JORDAN. Mr. Rodriguez, do you think, as a constitutional scholar here, do you think that's somehow a threat to democracy if we ask how many people are here and how many citizens are here?

Mr. RODRIGUEZ. No, it's entirely consistent with Congress'—

Chair JORDAN. Mr. Mayfield, do you think that's a threat to democracy?

Mr. MAYFIELD. The census has no effect on democracy, Congressman.

Chair JORDAN. Exactly. Mr. Yang, do you think asking a citizenship question, while you say it might impact the accuracy—I don't

know that I'd agree with that. I, frankly, disagree. Do you think that might threaten democracy in some manner?

Mr. YANG. It's a threat to accuracy, which means that it would be a threat to how we allocate funds in the United States. That's how—

Chair JORDAN. That's not what I asked you. I said, "Do you think it's a threat to democracy?" because that's what my Democrat colleague said just four minutes ago.

Mr. YANG. How people are being represented, and the funding that they get, would be a threat, yes.

Chair JORDAN. You think asking a citizenship—the Democrat witness thinks asking a citizenship question on the census is a threat to democracy. Do you think that's true?

Mr. YANG. As currently constituted, it could be, yes.

Chair JORDAN. Well, that's amazing. That's amazing. Finding out the number of people and the number of citizens in our country is somehow a threat to democracy, that's what the Democrat witness said in the House Judiciary Subcommittee hearing on the Constitution. That is amazing.

Mr. Chair, I yield back.

Mr. ROY. I thank the Chair of the Judiciary Committee. I will now represent—the gentlelady from California?

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair.

Apologies if this question has already been asked, but I like to hear things with my own ears. Mr. Yang, what is the census sort of used for? Why do we conduct this onerous process?

Mr. YANG. The principal use for the census is twofold. First, is for the apportionment of, Congress, seats in Congress, and second, again, accurate count of the population. When we're distributing funds, whether it's \$2.2 trillion in Federal funds or State and local funds, that we're distributing the right way. What that means, literally, is where roads are built; where schools are built; what services are needed in different communities. For businesses, what that means is what stores get built and what you stock on those shelves of those stores.

I live in Fairfax County. The fact that our Costco has approximately seven different, seven different types of rice is a reflection of the fact that Fairfax County is about 20 percent Asian American.

Ms. KAMLAGER-DOVE. Uh-hum. Thank you for that.

I would agree with that, right? Someone who lives in a city, a county, and a State, we're always fighting to get the resources that we need. It's important to know how many people, regardless of where they come from, regardless of who they are, what they look like, right, what language they speak, what rice they like, it's important to know how many people are in a place, so how many hospitals to have; how many schools to have; and how many parks to have.

Am I missing something here?

Mr. YANG. No. It is as a very basic as that. Again, the point is to get an accurate count.

One of the things that we've been talking about here is, so what affects accuracy? We've talked specifically about Texas and Florida as being inaccurate counts. Well, I would point out that, in the case of Florida, the Federal—the State government only allocates

\$300,000 to the count for the entire State compared to the State of Alabama, a much smaller State, which allocated \$1.2 million to the count of their residents.

How you do your get-out-the-count operations will translate into how accurate the results will be. There is a correlation there.

Ms. KAMPLAGER-DOVE. I do understand that it seems like my Republican colleagues want to get rid of every single foreign-born person in this country. It boggles the mind because—

Ms. HAGEMAN. I would object. I think that this is attacking—

Ms. KAMPLAGER-DOVE. It's—

Ms. HAGEMAN. I think that is attacking individuals—

Ms. KAMPLAGER-DOVE. Well, you've been taking my time. I'd like to have my time—

Ms. HAGEMAN. I think that is attacking individuals—

Ms. KAMPLAGER-DOVE. Point of order.

Mr. RASKIN. Mr. Chair, could you restore the order, if you will?

Mr. ROY. Well, does the gentlelady have—

Ms. KAMPLAGER-DOVE. I made an opinion. I can have an opinion.

Mr. ROY. Is the gentlelady asking to strike—

Ms. HAGEMAN. I am. I'm asking to strike those words, accusing us of that level of racism.

Ms. KAMPLAGER-DOVE. It's not racist. If you think it—it's my opinion. I have a right to have an opinion.

Mr. ROY. We'll suspend for one second. Will the gentlelady express the specific words you're asking to be—

Ms. HAGEMAN. Specifically, what she stated was that the people on the other side wanted all foreign people to be removed from the country, and that's absolutely untrue.

Ms. KAMPLAGER-DOVE. As I mentioned, Mr. Chair it is my opinion.

Ms. HAGEMAN. That is attacking every person on this side of the aisle.

Ms. KAMPLAGER-DOVE. I have a right to my opinion. I said, "I believe"—

Ms. HAGEMAN. I am tired of all the allegations of racism.

Mr. ROY. Order. Order.

Mr. RASKIN. Mr. Chair, that's not—

Mr. ROY. Order. Let me suspend for a second.

Ms. KAMPLAGER-DOVE. I didn't use race at all.

Mr. ROY. Let me suspend for one moment.

Mr. RASKIN. Mr. Chair, if I could, that's not engaging in personalities. It's not an ad hominem attack.

Ms. HAGEMAN. Yes, it is.

Mr. RASKIN. If she disagrees, she can use her own time to explain why she disagrees.

Mr. ROY. Everyone suspend for one moment.

[Pause.]

Mr. ROY. The gentlelady from Wyoming, are you withdrawing the request to strike the words from the gentlelady from California?

Ms. HAGEMAN. Yes. Yes. I just wanted to point out the allegations are absolutely unsubstantiated and it is ridiculous to—

Mr. ROY. OK. I'd yield—

Mr. RASKIN. Mr. Chair, could you instruct her to point it out on her own time?

Mr. ROY. Reclaiming the time, but, the gentlelady from the California, please proceed. We will restore the clock.

Ms. KAMLAGER-DOVE. Thank you, Mr. Chair. I guess I don't want to use my own time saying, but I guess now perspectives and opinions are no longer important here in this Committee. That seems like it would be a shame.

Mr. Yang, we are talking about the census, and the question is—it kind of doesn't matter where you come from. If you are someplace, if you are using resources, it would be important for that jurisdiction, for that municipality to know that you are there. Where I come from, if you get sick, you should go to the hospital. The hospital is not supposed to say, well, who are you? Let me see all your paperwork. That doctors take a Hippocratic Oath to help anyone who is coming in bleeding who would be wanting to need or use the resources that are available to them in that hospital. Do you understand sort of question that I am asking about why it is important just to know who is in a particular place?

Mr. YANG. That's absolutely right. With respect to public services and with respect to roads, that immigration status does not matter when it comes to the need for good roads and the need for good public services. Making sure we have an accurate count of our entire population—and again, if you even go to Supreme Court precedent in *Evenwel*, they recognize that you should be doing total population counts, whole population counts for purposes of apportionment. The history of this has been very clear that the census is designed to count the entire population.

Ms. KAMLAGER-DOVE. Thank you for that. As I look at all my questions, not one word in any of these questions is the word race. Mr. Yang, Assistant Attorney General Rodriguez says in his written testimony that apportionment should not account for those in a State unlawfully. What would be your response to that?

Mr. YANG. Well, I don't see anything in the Constitution that makes any sort of distinction. Rather, what the 14th Amendment provides in the census—in terms of apportionment in Article 1, Section 2, with respect to census is the counting of whole persons, and it makes no distinction.

Now, in the written testimony it makes reference to the fact that somehow they should be part of a political community, but the notion of political community does not exist anywhere in the text of the Constitution, the 14th Amendment, or the Apportionment Act. Certainly, even the contemporary dictionaries that he cited, except for a reference of parish law, did not make any reference of being part of a political community. Rather, simply, a resident is someone that has a normal place of domicile.

Now, to be clear, there are rules that the census with respect to people that are transient, with respect to people that have tourist visas, for example, should not be counted in the census. There are residency rules with respect to census as to what is considered a resident.

Ms. KAMLAGER-DOVE. You mentioned whole person in the—I see the constitutional framers use the phrase whole number of persons rather than citizen or voter. Why do you think they did that? Be-

cause of course when you say whole person, of course, this time I am going to use race, but I am going to talk about myself. There used to be a time when a Black person was not even considered a whole person. It was like three-fifths of a person. I am getting a little triggered by that phrase. Can you explain sort of why the framers used that phrase?

Mr. YANG. You're correct, representative. Unfortunately, when the Constitution was first adopted slaves were not considered citizens—for purposes of a census was considered three-fifths of a person, as a distinguish from a so-called whole person. It wasn't until the 14th Amendment that citizenship was given to slaves and anyone born of slaves, and that making clear that when we are counting, we are still counting all persons in the State.

Ms. KAMLAGER-DOVE. Tell me again, can you reiterate for the folks that can't seem to maybe hear what you are saying about why it is important to have an accurate count when you were doing the census?

Mr. YANG. Well, having an accurate count for persons of data allows us to make sure that we have the services that we need in the United States for everyone. We need a society that has infrastructure for everyone. It is true for immigrants, nonimmigrants alike. Certainly, there can be policy debates around different aspects of that but at least having the set accurate data that all us can work from is critical to how this Nation functions.

Ms. KAMLAGER-DOVE. Thank you, Mr. Yang. Mr. Chair, I yield back.

Mr. ROY. I thank the gentlelady from California. I will now recognize the gentlelady from Wyoming.

Ms. HAGEMAN. Well, first, I disagree with the idea that there is a constitutional requirement for conducting a census, so that we can have different varieties of rice at Costco. I almost want to say that almost all countries conduct a census.

Ms. KAMLAGER-DOVE. Mr. Chair, that is racist.

Mr. ROY. Does the gentlelady have a—

Ms. KAMLAGER-DOVE. Yes, that should be stricken.

Mr. ROY. Does the gentlelady from Wyoming have a response?

Ms. HAGEMAN. Rice, or hamburger, or any other foodstuff. That isn't why we conduct a consensus.

Mr. RASKIN. Mr. Chair, those words, as ill-advised and foolish as they were, were probably not engaging in personalities, we can let that go and call it even after—

Ms. KAMLAGER-DOVE. Yes, Mr. Chair, I will withdraw.

Mr. ROY. Proceed.

Ms. HAGEMAN. I was using the terminology that Mr. Yang used. If you weren't listening.

Ms. KAMLAGER-DOVE. I was listening but I was also getting your vibe.

Ms. HAGEMAN. OK. Mr. Roy. The gentlelady from Wyoming will proceed.

Ms. HAGEMAN. Almost all countries that conduct a consensus actually have a citizenship question, and the U.N. says that it is best practice to include a citizenship question in these censuses. Countries that ask about citizenship are Canada, Australia, Ireland, Germany, and Mexico. The source of this is *The New York Times*.

Mr. Mayfield, I would like to focus on the Census Bureau's decision to utilize the differential privacy methodology for the first time in the 2020 Census.

I am incredibly concerned that intentionally creating structural inaccuracy census data collection at the lowest unit has impacted the reliability of nationwide census counts, Congressional reapportionment, assignment of Presidential electors, redistricting, and Federal funding allocations.

In light of these concerns, could you briefly explain the steps that the Census Bureau took when adopting and implementing this differential privacy within the 2020 Census?

Mr. MAYFIELD. To put it in shorthand, Congresswoman, this was done at the civil servant level without any legal opinion being obtained. The decision was made by John Abowd, who is the Director of Privacy and Statistics, and a small group of people working with him. There was actually opposition from other parts of the bureau because the test repeatedly demonstrated that it would falsify data, including the block level that you mentioned, but anything below the State level.

They proceeded with that because they wanted to do differential privacy, not because there was any need for differential privacy. Data swapping, which was the method used in the previous three censuses, had always been adequate, and to this day there is still no problem with it. There is a 2023 study by researchers from Harvard, NYU, and Columbia that finds that data swapping is just as good as differential privacy, but it doesn't alter the data. There was no reason to do this.

Now, to give you an example of just how bad it is, this is post-use of differential privacy—that study found the use of differential privacy, for instance, if you had three Hispanics on one block, you create a variance anywhere in the State of zero Hispanics or six Hispanics. In other words, 100 percent difference either way.

All the data, as Mr. Miller alluded, below the State level has been subjected to differential privacy. Because of the way the algorithm works—it's a top-down algorithm—none of the data can be released in unaltered form. You cannot actually get the results of the survey below the State level. You may know there are nine million people in Indiana, but you don't know how many people there are in Muncie, you don't know how many people there are on Mayfield Street in Muncie.

Ms. HAGEMAN. They cooked the books, and they did so intentionally. Is that a good way of describing it?

Mr. MAYFIELD. That is accurate.

Ms. HAGEMAN. All right. They didn't follow the Administrative Procedures Act, they didn't put this out for notice and comment, they didn't solicit information from people, statisticians, economists, States, or local governments about how best to do the census of counting their people to do as Mr. Yang says, which is to know how many people live in our country. They didn't do any of that?

Mr. MAYFIELD. It's even worse than that, Congressman and Congresswoman. Excuse me. They didn't do notice and comment. There's a debate about whether or not that's required. There are numerous Committees to allude to something that Congresswoman Scanlon mentioned in her opening statement the Census interacts

with consumers of census data and partners, including State and local governments, and including interest groups. Every single statistical group objected to this by letter. Every single State.

The National Conference of Legislators objected. Maine objected. It's a Blue State. Utah objected, a Red State. The city of Alexandria, just across the water here, very Blue, objected. Maricopa County, very Red, objected. The House Progressive Caucus. They were right. They objected. The Mexican American Legal Fund. They objected. The Native American Tribes objected. Everyone knew—it was well-known that this would not work. The Census civil servants, a small group of them, went ahead with it because they wanted to do it, not because there was any need, and disregarding the fact that it made the census inaccurate the enumeration stage.

Ms. HAGEMAN. They did it because they wanted to cook the books and they wanted to manipulate the data to have the outcome that we actually had, which is overcounting people in six Blue States, or liberal States, and giving them additional Members in the House of Representatives. Is that fair?

Mr. MAYFIELD. If I might respectfully disagree with that part, I believe it was done out of professional pride because there was an obsession with using differential privacy. Several other speakers have alluded to the use of internet data and supercomputers, which is what John Abowd mentioned.

Congress does not exclude the use of outside data. If anyone here wants to grab census data and buy something from the internet, or buy a credit card company's data and combine them, that creates no violation. There is no problem with doing that. Section 9 of Title XIII bars only the disclosure of personal data; in other words, your census form that you filled out for your house.

The errors that have been attributed with respect to the number of people are based on post-enumeration surveys. In other words, the Census does quality checks after the census. Those are models. They are not themselves enumerations. They are no good—are no better than the models and the data that's put in them. There are errors after every census that are believed.

What you do is use that data to try to focus on your next census and all your other data collections to make sure that you don't miss other people, that you don't overcount them. It may be an educated guess that some States received more people and some States received fewer, but it is a guess. It is certainly no better than the modeling that the people in the bureau did.

Ms. HAGEMAN. OK. I know that I am out of time. What I hope comes out of this hearing, however, is that we have solutions of what Congress can do to make sure that these inaccuracies are addressed and that we never have this kind of mess again.

I also would ask for unanimous consent to submit into the record, "What You Need to Know About the Citizenship question in the census," July 2, 2019, by *The New York Times*.

Mr. ROY. Without objection, that will be entered into the record. I thank the gentlelady from Wyoming. I now recognize the Ranking Member, Ms. Scanlon.

Ms. SCANLON. Thank you, Mr. Chair. Thank you to all our witnesses because there is a lot to dig into here. It was a really interesting discussion.

I guess there are a couple points of clarification. Mr. Yang, do you think there's general agreement that the purpose of the census clause is to get an accurate count of all persons?

Mr. YANG. Certainly, that has been the history. It has been non-partisan, that is the purpose of the census, as defined in the Constitution, and defined in the 14th Amendment for purposes of apportionment, is to count all persons. That is the literal text.

Ms. SCANLON. We have considerable constitutional history and court opinion saying they did not choose to say inhabitants. They did not choose to say taxpayers. They did not choose to say citizens or voters. It is persons.

Mr. YANG. That is correct. This came up in the context of a Supreme Court case called *Evenwel* where an argument was made that apportionment should be based solely on legal voters. The court, the Supreme Court in that case rejected that approach and said that we should be using total population. Total population or whole population for purposes of apportionment.

Ms. SCANLON. Sure.

Mr. YANG. That case was in 2016, so it was only 10 years ago, 5–9 years ago.

Ms. SCANLON. Of course, there has been a lot of discussion about what questions should be on the census or not be on the census. I heard my colleague across the aisle talk about it being a good thing to put a citizenship question on the census, although context is important when we are talking about Canada, Ireland, or some of the other Nation States that were mentioned. They certainly do not have administrations that are actively engaged in hostility toward immigrants. That is an important distinction.

When you were testifying you talked about the two biggest things that undermine accuracy in the census, and first, was privacy concerns and antigovernment sentiment. The second, was a lack of robust—get-out-the-census, get-out-the-count efforts. I certainly participated in count efforts in my home State.

With respect to the privacy and antigovernment concerns, I wish Mr. Massie were here, because I know it is a big interest of his. In an era where we have got DOGE trolling through everyone's Social Security, and SNAP records, and voting records, and everything, can you talk a little bit about how those privacy concerns might be heightened right now?

Mr. YANG. Well, this goes to—thank you for that question. This goes to the decrease in trust that Americans have in U.S. Government, which is unfortunate, but that is the case. That is because of—whether we want to talk about DOGE or what Representative Balint talked about, immigration enforcement. Certainly, that also breeds distrust within certain pockets of our community, whether it's the Hispanic community or the Asian community.

When we are trying to determine an accurate census, all that context matters. Simply citing the history of how the census was used in the past when there might have been more trust in the government, is different than what we are looking at today.

Ms. SCANLON. Yes, I certainly hear from my constituents that they are very, very concerned about these efforts to troll all the Federal data, and certainly the census would provide another opportunity to do that.

We also have in your testimony on page 5, information about which groups were overcounted or undercounted in the 2020 Census. I would note that non-Hispanic Whites were overcounted, but there were some pretty serious undercounts, as you've mentioned before, among Hispanic or Latino, Blacks, and children, et cetera. It does seem important that we try to have more robust counting in those areas.

Mr. YANG. That's correct. To be clear, representative, overall the census was accurate. When compared to the 2010 and 2000 Census, they were within—they were all considered statistically insignificant with respect to overcount or undercount. Certainly, when you compared the 1990, 1980 Census we did much better.

That said, we recognize that there are overcounts and undercounts. We all agree we should continue to work on figuring that out and how best to do that. Certainly, for my community, the Asian community, part of this is outreach. Part of it is also language barriers that people face. Part of it is distrust of the government. Making sure we address all these barriers. For rural communities it's internet access, especially in this age where the census can be conducted by the internet. We should be thinking about those barriers to make sure how we get an accurate count.

The last thing I might add quickly is also I would ask the Members of Congress to fully fund the Census Bureau. The budget right now—the request is around two billion, by our community 1.8 billion. Right now, the funding is at 1.35 billion. If we want to address a lot of these technical issues as well as figuring out how to do it right to get an accurate count, robust funding is necessary.

Ms. SCANLON. Yes, and the last question I had was with respect to some attempt to conflate the undercounting, which was admitted, of certain Republican-led States conflating that with some political animus as opposed to being undercounting relating to these already marginalized populations. Is there anything that you have seen to indicate that it was based on political motivation as opposed to those States just having marginalized populations which have been undercounted across the board?

Mr. YANG. Yes, thank you for that question. We have the honor of working with the Census Bureau and they're dedicated civil servants. They're trying to get this right. They recognize that they did make mistakes and there were certain undercounts and overcounts. The reason is complex, like we've talked about. Part of it is distrust. Part of it is underinvestment by certain communities in making that count happen.

When you look at it in the aggregate, especially when you look at where the overcounts and undercounts occurred, it's not fair to say that it only occurred in Red States or only occurred in Blue States. It occurred in a lot of different States, but it also was overall pretty accurate. We should think about all these in that context before making any snap judgments.

Ms. SCANLON. I appreciate the Chair calling this so we can work on continual improvement of the process. Thank you.

Mr. ROY. I thank the Ranking Member. I will now represent the gentleman from Wisconsin.

Mr. GROTHMAN. Thank you for being easygoing on the five-minutes. That is what I do, too.

OK. First, Mr. Yang, I just got to interject myself in here on something that you said that was I thought offensive. There is a three-fifths clause in our original Constitution. That was the result of a compromise. I suppose it could have been 100 percent, but the reason it wasn't 100 percent is the freedom-loving people did not want to give the slave States too much power in Congress. OK?

You imply that the reason it wasn't 100 percent was because people were trying to say Black people were less than White people. That wasn't the point at all, you understand? The point is that the free States: Pennsylvania, New York, and New Jersey, those states did not want to give too much power to the slave States. It was not done to punish slaves. It was done to look down the road—eventually, we had a civil war anyway, but it was looking down the road to make sure that the slave States did not have too much power. OK? You understand that? I hope you understand that, but you just explain the three-fifth thing in a way to make America look worse in the eyes of young people. Do not appreciate that.

Now a question for Mr. Miller. Has the census ever—

Mr. RASKIN. Mr. Chair, just a quick point of order. Would it be possible for me, after the gentleman speaks, to respond to that, because of the profundity and the depth of the statement he just made? I think it—

Mr. ROY. It is the gentleman from Wisconsin's time.

Mr. RASKIN. I don't mean to—exactly. I don't want to detract from his time. I am wondering if maybe we could go for a second round just to explicate that.

Mr. ROY. You and I can talk offline.

Mr. RASKIN. OK.

Mr. ROY. We will let the gentleman from Wisconsin ask his questions.

Mr. RASKIN. OK. Very good. Thank you.

Mr. GROTHMAN. OK. Mr. Miller, has the census ever included a citizenship question?

Mr. MILLER. Yes, historically it has included the citizenship question.

Mr. GROTHMAN. OK. Why was it removed?

Mr. MILLER. That's speculative. That there were motives for that. States would be motivated by it if they get more money from the Federal Government. There're partisan reasons why you would want to do it. There's a lot of reasons and it's probably fairly complicated.

Mr. GROTHMAN. Who was the President at the time it was removed, do you know?

Mr. MILLER. The last one was at '50s, is what we said—1950s.

Mr. GROTH. Truman? OK. Assuming you are right. Has the Supreme Court ever held that it is illegal to include this question?

Mr. MILLER. No, I don't believe the Supreme Court has ever weighed in to say that you cannot ask a citizenship question.

Mr. GROTHMAN. Could President Trump and Congress Secretary Lutnick add a citizenship question to the 2030 Census?

Mr. MILLER. Yes.

Mr. GROTHMAN. OK. Could you give me some benefits, I am shocked that it's not there already, but do you want to speculate on some benefits we would get if we added such a question?

Mr. MILLER. Well, it would impact especially if you got rid of differential privacy, you could know how to allocate Federal funding formulas more accurately to make sure that it's going to citizen or lawful permanent resident populations that legally qualify for them. If you want to have this impact redistricting and you want to argue on a constitutional basis that political districts should only represent citizens, or citizens and lawful permanent residents, that you would need to know that data. That would have a massive impact on how political maps are made and who is in Congress.

Mr. GROTHMAN. Couldn't we also assume that people who are not here legally probably aren't going to be hanging around that much longer?

Mr. MILLER. I don't know. A lot of them have been here for a long time. Some of them are seasonal workers and leave after a couple of years. It's hard for me to answer that precisely with such a large population.

Mr. GROTHMAN. OK. Not across the board, but wouldn't one expect that if some people were here illegally or on a temporary visa that they weren't going to be here for the whole 10 years, or maybe even—

Mr. MILLER. That's correct. There's a lot of movement of that population both into and out of the United States of America.

Mr. GROTHMAN. OK. Could you explain the differential privacy controversy, I will put it?

Mr. MILLER. Yes. Basically, you have data, and there's been previous methods of keeping basically recognizing data privacy laws. There were different methods of protecting privacy. This is a new method, but it's highly flawed because it scrambles all the data. It literally deconstructs an entire person, reconstructs them in the aggregate all over the place.

There are arguments that it will disproportionately help urban areas. There are arguments it will disproportionately hurt rural areas. There are racial issues here. Basically, it's fake data below the State level and it's really hard to create political districts that are accurate and representative of the voting population especially when you don't have accurate numerical population data at a granular and semigranular level.

Mr. GROTHMAN. Would you support returning to what we will call swapping for the 2030 Census?

Mr. MILLER. I think there's several other proposals—that is combined with the ability to turn off characteristic data until you're at statistically significant levels. There are other methods that strategies are multitiered that are mentioned by entities like IMPS that would work. Essentially yes.

Mr. GROTHMAN. OK. Thank you.

Mr. RASKIN. Would the gentleman yield? FBI—

Mr. ROY. I think the gentleman from Wisconsin would—regarding?

Mr. RASKIN. I was just wondering if you—I just wanted the opportunity to respond to Mr. Grothman's intervention.

Mr. ROY. It is the gentleman's time, but out of courtesy to the Ranking Member, I'll give the gentleman 30 seconds.

Mr. RASKIN. OK. I just want to say that the analysis he advanced is historically obtuse and morally disoriented. The slave States took the position that the enslaved African Americans should count 100 percent for the purposes of reapportionment, but for those purposes only. They didn't have any civil rights. They didn't have any voting rights. They couldn't run for office. They had no civil liberties. They were property. The Northern States said they should not count at all.

Mr. ROY. Reclaiming our time.

Mr. RASKIN. They should count zero. They arrived at the three-fifths—

Mr. ROY. Reclaiming the time. We are not going to have a history lesson here. The gentleman from Wisconsin was making a point with respect to the often-used three-fifths reference. With respect—

Mr. RASKIN. I was trying to explain what the historical genesis of it is.

Mr. ROY. The history of it, the gentleman from Wisconsin characterized it from his perspective. It was important for him to put that on the record. It has been asked and answered and we don't need to have a history lesson it. I am going to go ahead and proceed with my questions.

Mr. ROY. This hearing has been illuminating on a number of different levels. I would like to ask just a simple question for the panel generally, which is very specifically was the 2020 Census accurate? Mr. Mayfield?

Mr. MAYFIELD. At the State and national level it was within a margin of error for modern censuses. The State level it was not.

Mr. ROY. Mr. Rodriguez?

Mr. RODRIGUEZ. Considering that it counted illegal and non-immigrant aliens, it was inaccurate according to the dictates of the Constitution.

Mr. ROY. Mr. Miller?

Mr. MILLER. It was the most inaccurate census in modern times in my opinion.

Mr. ROY. Mr. Yang?

Mr. YANG. At the State and national levels it was accurate. At the sublevels below that it was inconsistent at times, but overall, still did very well.

Mr. ROY. Was it true that in 2022 that the Census Bureau itself acknowledged that there were significant errors and significant discrepancies? Is that correct, Mr. Mayfield?

Mr. MAYFIELD. That is correct.

Mr. ROY. All right. Did it have a significant impact on States in that there was undercounting and overcounting of at least 14 States? Mr. Mayfield?

Mr. MAYFIELD. That is the Census' position as of 2022.

Mr. ROY. Now, was it also accurate that, in fact, the undercounting was often directed toward more conservative States with more Republican representation and the overcounting was directed toward what we might call Blue States with more Democrat representation?

Mr. MAYFIELD. I can't address your use of the word direction. That is certainly what the modeling suggests was the result.

Mr. ROY. Mr. Miller, would you add to that?

Mr. MILLER. Yes, the Census Bureau would acknowledge that this would have been the outcome.

Mr. ROY. To the tune of as many as 500,000 in the State of Texas, for example?

Mr. MILLER. That's correct, costing Texas an additional Congressional seat.

Mr. ROY. Let's get to the heart then of why. Why is that the case? We have posited here in this hearing—I have heard a number of folks represent that one of the reasons is because of illegal immigrants. True or false, is the issue of how we count involving illegal immigrants having a direct impact on representation in Congress? Mr. Mayfield?

Mr. MAYFIELD. That is undeniably true.

Mr. ROY. Mr. Rodriguez?

Mr. RODRIGUEZ. I agree. It's been true for at least the last three censuses.

Mr. ROY. Mr. Miller?

Mr. MILLER. It's a mathematical certainty.

Mr. ROY. Mr. Yang?

Mr. YANG. Undocumented immigrants are required to be counted under the Constitution.

Mr. ROY. Do they have a direct impact on how we apportion and how districts are getting set up?

Mr. YANG. That is less clear to me.

Mr. ROY. Let me ask you a question, Mr. Yang. You posited earlier some theories about how we count people and that we should count everybody for apportionment purposes. If 75 million people were to come into the State of California between now and 2030, should we have 100 new Congressional seats in California, if all 75 million of those people were illegally present in the State of California?

Mr. YANG. That's the way the Constitution is currently constructed as I understand it.

Mr. ROY. That is taking issue with that, by the way, that the Constitution requires that we apportion based on people who are here illegally, which a number of the other people on the panel have questioned, and at no point has the Supreme Court said that is the case, then we are saying here—the Democrat witness is saying that if we had 75 million people illegally flood into the State of California, we must have 100 representatives—again, rounding the math there—added to the State of California? That is extraordinary to me.

I do want to followup and finish on this question of the differential privacy. The other question that has been raised here, which is highly problematic on a less-partisan basis, is the extent to which we have the Census Bureau adopting, by Mr. Mayfield's testimony, by edict of a civil servant bureaucrat at the Census Bureau, an approach to estimating and guessing the population based on something that was attacked by numerous groups, questioned by numerous groups, and is now proven to be statistically problem-

atic, that it is actually causing massive problems with respect to our counting. Is that fair, Mr. Mayfield?

Mr. MAYFIELD. That is accurate.

Mr. ROY. Mr. Rodriguez, is that fair?

Mr. RODRIGUEZ. It's fair.

Mr. ROY. Mr. Miller?

Mr. MILLER. We may disagree on a lot of different things, but there's a bipartisan consensus that this is a problem, a big problem.

Mr. ROY. Mr. Yang, you said something that needed fine tuning, but you also seem to acknowledge that there are significant problems with respect to the way this is being handled now.

Mr. YANG. As a new policy I agree that this is something that needs to be evaluated, absolutely.

Mr. ROY. Mr. Miller, you have thrown out a couple ideas. I want to conclude on that point because I think it is really important that there are other ways to go about doing this. Swapping, you get into that. The issue here for everybody to understand is you have laws that say you got to protect privacy. You have got a massive file that is protected at unbelievable levels of security and inability to look at the data. Therefore, we have to figure out how to know that we have an accurate census. This differential privacy is raising massive concerns on a nonpartisan basis, right? A Harvard study: Independent groups, groups on the Left, and groups on the Right. It would seem to me that we should come to a consensus on how we should approach this.

Could the gentleman finish filling in that question and that point?

Mr. MILLER. Absolutely. At the end of the day there is a constitutional purpose for all this. A privacy statute cannot be a reason by which to ignore the constitutional outgrowths and outflows of what the purpose of this data is.

If we have a privacy standard that is causing—I think most people would agree with this at this point, it's significant data distortion that is impacting all sorts of Federal funding formulas, all sorts of potentially definitely redistricting, potentially depending on how it's not everything that we believe it is, and not everything that they're purporting to say it is, in theory it's not supposed to affect apportionment, I don't have access to the data. I can't verify that. That's how it's supposed to work.

At the end of the day, we should defer to a privacy method that is also as good and does not create as many constitutional issues as we have seen. If that is achieved by swapping and turning off data, we need to get our smart people together and figure out another option.

Mr. ROY. You were suggesting—in closing, my time is over—the—turning off the data. That was an approach you are suggesting to try to have an approach.

Mr. Yang, can I just ask you on a nonpartisan basis with just a little indulgence, do you have a perspective on that? Because I saw you nodding—maybe all of a sudden that intellectual chewing on it as to whether that would be an approach that might help solve the problem of managing privacy but not having data that is problematic.

Mr. YANG. Like I said, this is worth evaluating. This is a part of what happens after ever census is the Census Bureau looks at what worked, what didn't. It acknowledges what mistakes are made. It acknowledges in this case that there were certain overcounts and undercounts. That's no different than any other census. Now, the job of the Census Bureau is—with guidance from all of you, is to move forward and make that system even better for the next census.

Mr. ROY. All right. I thank the panel. I now know that my colleague from Texas—

Ms. SCANLON. I would just seek unanimous consent.

Mr. ROY. Sure.

Ms. SCANLON. We have discussed the census after review quite a bit, so I would like to seek unanimous consent to introduce the GAO report on the 2020 Census: "Coverage, Errors, and Challenges to Inform the 2030 Plans." There have been a lot of misstatements about what it shows, so it is good for everybody to have access to it.

Mr. ROY. Without objection, we will insert that into the record.

Ms. SCANLON. Thank you.

Mr. ROY. I will now recognize the gentleman from Texas, Mr. Hunt.

Mr. HUNT. Thank you, Mr. Chair. The time has come to elucidate the American people in the census manipulation that Democrats have been using to influence American elections for years.

In 2018, Republican leadership, including the President himself, called for a citizenship question to be included in the 2020 Census Reports. To no one's surprise, when the Democrats took control, these requests went unanswered and the question of citizenship was waived. The fact remains that the concept of sanctuary cities and radical Blue States ignoring immigration law and using the illegal population to manipulate the lines of Congressional districts is in fact unconstitutional.

Not only are there severe constitutional concerns from the inclusion of illegal immigrations, but the Census Bureau admitted to having made several, quote, "errors" in their 2020 Census Report. Convenient, seeing that as in 2020 Donald Trump was on top of the ticket.

In 2020, the bureau undercounted in primarily deep Red States such as Arkansas, Florida, Mississippi, Tennessee, and Texas, all Red, while overcounting in radical Left Blue States like Delaware, Hawaii, Massachusetts, Minnesota, New York, Ohio, and Rhode Island. This egregious error led to many States being denied proper representation in Congress and the Electoral College. So much so that these errors cost Republicans not one, not two, not three, not four, not five, but six seats in the House.

In addition to the 2020 miscounting, including illegal immigrants in the census has improperly granted radical Left Blue States 12, 12 additional seats in the U.S. House of Representatives. That is a total of 18 seats gained. That is a huge problem. Those are the facts.

Mr. Mayfield, thank you so much for being here. Sir, I have a question for you if you don't mind. You, sir, are a seasoned litigator who has practiced in matters ranging from complex commercial litigation to constitutional and administrative law. In your expert

opinion,—I want you to really speak about this in long form because I want this recorded—should illegal aliens be included in the apportionment process under the 14th Amendment?

Mr. MAYFIELD. The Supreme Court has never directly addressed that, Congressman. For apportionment purposes as Congress has interpreted it the Supreme Court has held that it currently applies to all people regardless of citizenship. There is certainly an open question as to whether or not—if Congress were to direct the Census Bureau to do it differently as to whether or not that would be legal.

Mr. HUNT. OK. In regards to thinking more of a high-level, in terms of being a citizen and what it means to be a citizen in this country—and I do believe that being a citizen in this country means that you have the right to choose the leadership, if you are a tax-paying legal citizen in this country. If you are an illegal person in this country, should you under any circumstances be allowed to vote and choose leadership in this country?

Mr. MAYFIELD. That wouldn't be an expert opinion that—as a citizen I would object to that.

Mr. HUNT. What about you, Mr. Rodriguez?

Mr. RODRIGUEZ. I also object to that.

Mr. HUNT. Mr. Miller?

Mr. MILLER. Correct. Citizens should not be—or illegal aliens should not be voting.

Mr. HUNT. That applies to you also, Mr. Yang. I would love to hear your response to this question.

Mr. YANG. Noncitizens are not allowed to participate in Federal elections.

Mr. HUNT. OK. Are they participating in Federal elections?

Mr. YANG. The studies have shown that there are very few instances in which they have.

Mr. HUNT. That number needs to be zero. As somebody who is a proud Texan, we, and in Florida, have done our best to get that number to zero. In spite of the fact that I just voted a couple of weeks ago, and we voted with paper ballots, that we had to show an ID for, they then verified my address and where I lived. Then, I had to put said piece of paper through a machine, copied it. They gave me another copy. They gave me my very proud “I Voted” sticker. Even with those stringent rules, with my daughter who is seven years old, was actually with me. She too got an “I Voted” sticker. Guess what, with those stringent laws we still have illegals voting in Federal elections.

The question is not even about what is happening in Texas. If it is happening in Texas, you have to imagine that it—while it may seem like a minuscule amount to you, sir, that number needs to be zero. If it is happening in Texas with those stringent rules, imagine what is happening in other Blue States that don't have anything that closely resembles that level of redundancy to ensure that the person that voted in that election is in fact a citizen that has an address and has an ID.

With that, I yield back the remainder of my time. Thank you very much.

Mr. ROY. I thank the gentleman from Texas.

That concludes today's hearing. We thank the witnesses for appearing before the Subcommittee today. Without objection, all Members will have five legislative days to submit additional written questions for the witnesses or additional materials for the record.

Without objection, the hearing is adjourned.

[Whereupon, at 12:14 p.m., the Subcommittee was adjourned.]

All materials submitted for the record by Members of the Subcommittee on the Constitution and Limited Government can be found at: <https://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=118665>.

