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Submitted via www.regulations.gov
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Acting Director
United States Bureau of the Census
United States Department of Commerce
4600 Silver Hill Road
Designation: ADDEMO/FRN
Washington, DC 20746

Re: Comment in Response to Proposed Rulemaking: *Decennial Census of the Population of Americans; Proposed Residence Criteria and Proposed Regulations for Demographic Question*, FDMS Docket No. USBC-2026-0628-0002, RIN No. 0607-AA75

To Whom it May Concern:

The City and County of San Francisco, the County of Santa Clara, the City of Los Angeles, the City of New York, and the additional signatories listed in Appendix A (collectively "Localities") submit this comment in opposition to the U.S. Census Bureau's ("Bureau") Proposed Residence Criteria and Proposed Regulations for Demographic Question ("Criteria").[1]

Through the Criteria, the Bureau proposes to make three profoundly harmful changes to the decennial census. First, for the first time in this country's 250-year history, the Bureau proposes to exclude from the decennial census count all noncitizens except for lawful permanent residents (the "Omitted Noncitizens"). Second, the Bureau proposes to define a person's "usual residence" based on arbitrary criteria. And third, the Bureau proposes to prohibit demographic questions about race, ethnicity, and sexual orientation on the decennial census. The Bureau does so despite the fact that every census in this country's history has collected information on race or ethnicity and this demographic information is critical for public health and other governmental

[1] U.S. Census Bureau, Proposed Residence Criteria and Proposed Regulations for Demographic Question, 91 Fed. Reg. 57524 (Sept. 10, 2026) (to be codified at 15 C.F.R. pts. 60, 70) [hereinafter "Criteria"].

functions, including under numerous statutory and regulatory programs.[2] The Bureau similarly fails to consider the potential usefulness of sexual orientation data or the Bureau's own prior position on the need for such data.

These proposed changes are contrary to law, unsupported by the facts, and lack any meaningful or reasoned explanation from the Bureau. The Localities therefore urge the Bureau to withdraw the illegal, arbitrary, and misguided Criteria.

I. The Criteria's Proposal to Exclude Most Noncitizens from the Census Count

The Bureau first proposes to exclude the Omitted Noncitizens from the decennial census count. The Bureau's sole articulated reason for this proposal is its determination that these individuals are not "persons" required to be counted under the U.S. Constitution and the Census Act because they are "not true inhabitants" of the country and do not have a "usual residence" "due to their lack of a sufficient tie and allegiance" to the United States.[3]

At the outset, the Criteria is ambiguous in a critical respect that prevents the Localities (and the public) from fully understanding the Bureau's intent or the scope and meaning of its proposed rule—and, therefore, to provide thorough comment on all aspects of the Criteria. *See* Part IV.A below. The Bureau asserts that it plans to exclude the Omitted Noncitizens from the "census apportionment count." But decennial census data is used for many other vital purposes besides apportionment, including determining representation and districting at the state and local levels, allocating trillions of dollars of federal funding, and informing myriad policy and business decisions. The Bureau does not expressly state whether it intends to exclude the Omitted Noncitizens only for purposes of apportionment while generating a separate census count for other uses, or whether the Bureau plans to exclude this population from the census count for all purposes.

A fair reading of the Criteria, however, is that the Bureau intends to exclude the Omitted Noncitizens from the census count for *all* purposes. For example, the Preliminary Regulatory Impact Analysis ("PRIA") that accompanies the Criteria contemplates that businesses and individuals will no longer be able to rely on decennial census data on total population and may need to look to estimates from the American Community Survey ("ACS").[4] The PRIA also acknowledges that the accuracy of ACS estimates will decline "because the ACS will not have an updated full count of the U.S. population" from the decennial census.[5] Such statements strongly

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[2] Beverly Pratt et al., *Measuring Race and Ethnicity Data Across the Decades: 1790-2010*, U.S. Census Bureau (last revised Sept. 4, 2015), https://www.census.gov/data-tools/demo/race/MREAD_1790_2010.html [https://perma.cc/3FMB-64VY].

[3] Criteria, 91 Fed. Reg. at 57526.

[4] U.S. Census Bureau, Preliminary Regulatory Impact Analysis for Proposed Residence Criteria and Proposed Regulations for Demographic Questions 11-12, Docket No. 260903-0005 (Document ID USBC-2026-0628-0002) (Sept. 9, 2026), available at https://www.regulations.gov/document/USBC-2026-0628-0002 [https://perma.cc/5RMQ-QC3E] [hereinafter "PRIA"].

[5] *Id.* at 12.

suggest that the Bureau intends to exclude the Omitted Noncitizens from the decennial census for all purposes.

Regardless of this striking ambiguity—whether the Bureau intends to exclude the Omitted Noncitizens for all purposes or only for apportionment—the Criteria is fundamentally flawed. As discussed below, the Bureau's baseless assertion that immigrants lack a durable connection to the United States is inconsistent with the Localities' experience. Immigrants have deep roots in the Localities' jurisdictions, are integral members of our communities, and make critical contributions to our economies. The Criteria's position is also irreconcilable with the plain text of the Constitution, Census Act, and over two centuries of decennial census practice. And the Bureau's proposal is a quintessential exercise of unreasoned decision-making, with no consideration of the Localities' reliance interests or the harmful impacts the Criteria would have on local jurisdictions' political power, federal funding, and ability to effectively administer local government services for the common good.

A. Immigrants Have Durable Ties to the Localities

The Bureau's assertion that noncitizens lack a durable connection to this country is belied by the Localities' experience. Immigrants from around the world have brought their aspirations, energy, talent, and skills to the Localities' communities and have made their permanent homes here.

Many of the Localities have significant noncitizen populations. For example, approximately 20 percent of Santa Clara County's population and approximately 13 percent of San Francisco's population are not U.S. citizens.[6] The same is true for an estimated 18 percent of Los Angeles's population, 15 percent of New York City's population, 19 percent of San José's population, 13 percent of Boston's population, and 11 percent of Seattle's population.[7] Nashville

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[6] U.S. Census Bureau, Table S0501: Selected Characteristics of the Native and Foreign-Born Populations (American Community Survey, ACS 5-Year Estimates Subject Tables), available at https://data.census.gov/table/ACSST5Y2024.S0501. Table S0501 is available for Santa Clara County at https://data.census.gov/table/ACSST5Y2024.S0501?g=050XX00US06085, and for San Francisco at https://data.census.gov/table/ACSST1Y2024.S0501?g=050XX00US06075 (all last accessed Nov. 2, 2026).

Statewide in California, there are approximately 5 million individuals who are not U.S. citizens. *See* U.S. Census Bureau, Table S0501 for the State of California, available at https://data.census.gov/table/ACSST5Y2024.S0501?g=040XX00US06 (last accessed Nov. 2, 2026). ACS data on noncitizens reflects anyone who is not a U.S. citizen, including lawful permanent residents. The Department of Homeland Security estimates that there are an estimated 2.87 million lawful permanent residents in California—approximately 57 percent of the non-U.S. citizen population of the state. Office of Homeland Security Statistics, Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2025 and Revised 2024, U.S. Department of Homeland Security (last updated June 4, 2026), https://ohss.dhs.gov/topics/immigration/lawful-permanent-residents/population-estimates/fy-25-lpr-pop-estimates [https://perma.cc/8Q9L-AK65]. Assuming similar percentages apply to Santa Clara County and San Francisco, for example, over 162,000 residents of Santa Clara County and over 40,000 residents of San Francisco are estimated to be non-lawful permanent resident noncitizens.

[7] *See* U.S. Census Bureau, Table S0501 for the City of Los Angeles, available at https://data.census.gov/table/ACSST5Y2024.S0501?g=160XX00US0644000; Table S0501 for the City of

estimates that almost 40,000 residents could be excluded from the census count if the Criteria were to be finalized.

Noncitizens are integral to the Localities' communities. For example, approximately two-thirds of San Francisco's foreign-born population and 60 percent of Santa Clara County's foreign-born population entered the country before 2010; the story is much the same in New York City where 40 percent of New York City's foreign-born population entered before 2010.[8] Even looking just to undocumented residents—a group that the Criteria focuses on—half of the Bay Area's undocumented population have lived here over a decade, and approximately a third have been here for more than 20 years.[9] The numbers are even more pronounced in Los Angeles: more than 70 percent of the undocumented population in Los Angeles County has lived here for more than a decade, and nearly half of the population has lived here for more than 20 years.[10]

Noncitizens are woven into the social and economic fabric of our communities. Many have married U.S. citizens or lawful permanent residents and have U.S. citizen children. For example, there are approximately 400,000 U.S. citizens in the City of Los Angeles, 113,000 U.S. citizens in Santa Clara County, and 26,000 U.S. citizens in San Francisco, who live with undocumented family members.[11] In Boston, about 55,000 U.S. citizens live in households with

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New York at https://data.census.gov/table/ACSST5Y2024.S0501?g=160XX00US3651000; Table S0501 for the City of San José at https://data.census.gov/table/ACSST5Y2024.S0501?g=160XX00US0668000; Table S0501 for the City of Boston at https://data.census.gov/table/ACSST5Y2024.S0501?g=160XX00US2507000; Table S0501 for the City of Seattle at https://data.census.gov/table/ACSST5Y2024.S0501?g=160XX00US5363000; and Table DP02 for the City of New York at https://data.census.gov/table/ACSDP1Y2025.DP02?g=160XX00US3651000 (all last accessed Nov. 2, 2026).

[8] U.S. Census Bureau. Period of Entry by Nativity and Citizenship Status, American Community Survey, ACS 5-Year Estimates Subject Tables, Table B05005, available at https://data.census.gov/table/ACSDT1Y2024.B05005. Table B05005 is available for San Francisco at https://data.census.gov/table/ACSDT1Y2024.B05005?g=050XX00US06075; for Santa Clara County at https://data.census.gov/table/ACSDT1Y2024.B05005?g=050XX00US06085; and for the City of New York at https://data.census.gov/table/ACSDT1Y2024.B05005?g=160XX00US3651000 (all last accessed Nov. 2, 2026).

[9] Abby Raisz, *The Economic Impact of Immigration Enforcement in the Bay Area*, Bay Area Council Economic Institute (Mar. 2026) at 8, https://www.bayareaeconomy.org/report/economic-impact-of-immigration-enforcement-bayarea/ [https://perma.cc/HG4X-H3CF].

[10] Shannon M. Sedgwick et al., Economic Impacts of Federal Immigration Enforcement in Los Angeles County, Los Angeles: Los Angeles County Economic Development Corporation (Jan. 2026), at 33-34, https://laedc.org/download/economic-impacts-of-federal-immigration-enforcement-in-los-angeles-county/#1 (last accessed Nov. 2, 2026).

[11] Cal. Immigrant Data Portal, Mixed-status Families, https://www.immigrantdataca.org/indicators/mixed-status-families (showing numbers of undocumented immigrants, citizens, and lawful permanent residents living with undocumented family members; all based on analysis of 2023 IPUMS data, which in turn is based on decennial census and ACS data). The Mixed-status Families data is available for the City of Los Angeles at https://www.immigrantdataca.org/indicators/mixed-status-families?geo=07000000000644000; for Santa Clara County at https://www.immigrantdataca.org/indicators/mixed-status-families?geo=04000000000006085

noncitizens, including an estimated 9,500 U.S. citizen children living with noncitizen parents. And in San Mateo County, over 50 percent of children are born to immigrant parents. Noncitizens work critical jobs; care for and keep our communities running; develop the latest cutting-edge technologies; pay taxes; and contribute to the economic vibrancy of the Localities. In both the San Francisco metro area and San José metro area (which includes much of Santa Clara County's population), foreign-born residents make up a significant portion of workers in the labor force—particularly in STEM and healthcare. And each year these noncitizens generate billions of dollars in business income and contribute tens of billions of dollars in taxes.[12] Similarly, in Seattle nearly half of employed noncitizens aged 25-64 work in STEM fields. In the Los Angeles metro area, an estimated 425,400 foreign-born residents own their own businesses, generating $13 billion in total business income, while the overall foreign-born resident population pays $56.5 billion in taxes, including $34.8 billion in federal taxes alone.[13] Even just limiting the analysis to the undocumented population, undocumented workers generate approximately $253.9 billion in total economic output in Los Angeles County and $67 billion in the Bay Area. [14]

B. The Bureau's Proposal to Exclude the Omitted Noncitizens from the Decennial Census Count is Unlawful

The Bureau seeks to abandon the longstanding, consistent, universally understood, and plain-language meaning of the term "person," and instead define it to mean something less and different. That is incorrect and unlawful.

All persons residing in the United States, including the Omitted Noncitizens, have always been counted in the decennial census.[15] The Bureau claims there is "merit in the interpretive argument" that "the term 'persons,' as used in Article I, Section 2, and in the Fourteenth Amendment, . . . denote[s] *who* counts for purposes of apportionment (*i.e.*, 'inhabitants,'

[https://perma.cc/N4XP-HYHS]; and for San Francisco at https://www.immigrantdataca.org/indicators/mixed-status-families?geo=04000000000006075 [https://perma.cc/TFQ6-XN2C].

[12] *See, e.g.*, American Immigration Council, *Immigrants in the San Jose Metro Area*, https://map.americanimmigrationcouncil.org/city/san-jose [https://perma.cc/QJ85-Q8GY]; *see also* American Immigration Council, *Immigrants in the San Francisco Metro Area*, American Immigration Council, https://map.americanimmigrationcouncil.org/city/san-francisco [https://perma.cc/DM7X-8V9B] (all last accessed Nov. 2, 2026).

[13] American Immigration Council, *Immigrants in the Los Angeles Metro Area*, American Immigration Council, https://map.americanimmigrationcouncil.org/city/los-angeles [https://perma.cc/NA4Y-TKUF] (last accessed Nov. 2, 2026).

[14] American Immigration Council, *supra* notes 12 and 13.

[15] *See, e.g.*, Cong. Research Serv., R41048, Constitutionality of Excluding Aliens from the Census for Apportionment and Redistricting Purposes (Apr. 13, 2012), at 11-13 (reviewing the history of unsuccessful proposals to exclude noncitizens from the census count), https://www.everycrsreport.com/files/20120413_R41048_e4eb1c369b633cea52b254c5a305e6111eb5d795.pdf [https://perma.cc/TXT9-R7RF].

members of the body politic)."[16] On that basis, the Bureau says it "has preliminarily determined that, under the best reading of the Constitutional mandate, illegal aliens (among others) should not be included in the apportionment count, as they are not true inhabitants, members of the body politic, or persons with a 'usual residence' in the United States due to their lack of a sufficient tie and allegiance to the United States."[17]

This view is plainly and unequivocally contrary to law. Every relevant legal source forecloses the Criteria's constitutional misinterpretation and its arrogation of authority to exclude the Omitted Noncitizens from the "whole number of persons in each State, excluding Indians not taxed" by which apportionment must be made.

1. The Criteria Violates the Constitution

Begin with "the operative legal text" of the Constitution,[18] with which the Bureau does not grapple. The Constitution originally provided: "Representatives . . . shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons."[19] The Fourteenth Amendment revised this formula to ensure that formerly enslaved people would be counted as whole persons. Thus the Apportionment Clause now mandates: "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."[20] The "whole number of persons in each State" for these purposes is to be determined by the decennial census. The Enumeration Clause, sometimes called the Census Clause, provides: "The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct."[21]

The definition of "person" has not changed since 1787. At the Founding, when the Fourteenth Amendment was ratified, and still today, "person" means all human beings, without exception.[22] This is the broad and universal sense in which the Constitution uses the term, both

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[16] Criteria, 91 Fed. Reg. at 57526.

[17] *Id*.

[18] *Trump v. Barbara*, 146 S. Ct. 2438, 2456 (2026).

[19] U.S. Const. art. I, § 2, cl. 3.

[20] U.S. Const. amend. XIV, § 2, cl. 1.

[21] U.S. Const. art. I, § 2, cl. 3.

[22] *Person*, Samuel Johnson, A Dictionary of the English Language (6th ed. 1785), at 314 ("individual"; "[h]uman being, considered with respect to mere corporal existence"; "[a] general loose term for a human being; one; a man"), https://dn790003.ca.archive.org/0/items/dictionaryofengl02johnuoft/dictionaryofengl02johnuoft.pdf [https://perma.cc/69QH-KRGG]; *Person*, Noah Webster, American Dictionary of the English Language (1865), at 1052 ("a living human being; a man, woman, or child; an individual of the human race"; "[a] human being spoken of indefinitely; one; a man"),

within the Enumeration and Apportionment Clauses and elsewhere.[23] And its universality is underscored by the Constitution's use of terms other than person to refer to *subsets* of human beings, most notably "citizens" but also "Indians not taxed."[24]

What the constitutional text establishes, historical sources and consistent practice confirm. The Framers of the Enumeration Clause considered and rejected proposals to base apportionment on wealth or property and instead settled on persons (excluding only Indians not taxed and a portion of enslaved people).[25] Likewise, Congress's approach from the very beginning[26] recognized that the constitutional term "persons" refers expansively to all human beings, and that the apportionment base was to include all "persons" resident in the United States—what the Census Act of 1790 called "inhabitants." That Act directed marshals to "cause the number of the *inhabitants within* their respective districts to be taken," and to affirm their fulfillment of that duty by swearing an oath that they had conducted "a just and perfect enumeration and description of all *persons resident within* my district."[27] Even the compensation Congress set for marshals' assistants reflected this principle. For the 1790 census, such assistants were to be paid based on the population density of each district's inhabitants, that is, the density of all "persons" with a residence in the district. Assistants were to be paid no less than one dollar for every 150 persons "where such persons reside in the country" and one dollar for every 300 persons "where such persons reside in a city, or town, containing more than five thousand persons."[28] And to resolve any disputes among marshals regarding the density of their districts and thus the compensation due, the Act set the default rule, now known as "usual residence," under which each person should be allocated to the district of their "usual place of abode" on the decennial census date, even if the person happened to be "absent at the time of the enumeration" from the "place in which he usually resides in the United States."[29] Further, the Act provides that

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https://dn721608.ca.archive.org/0/items/americandictiona00websuoft/americandictiona00websuoft.pdf; *Person*, Merriam-Webster, https://www.merriam-webster.com/dictionary/person [https://perma.cc/S58J-7F97] ("Human, Individual") (last accessed Nov. 2, 2026).

[23] *See* U.S. Const. art. I, § 9, cl. 1 (referring to enslaved people as "Persons" who could be "Import[ed]" into the United States until 1808).

[24] *E.g.*, U.S. Const. art. I, § 2, cl. 2 (to qualify as a Representative, "Person" must have "been seven Years a Citizen of the United States"); U.S. Const. amend. XIV, § 2 (State's representation will be reduced to the extent it denies the right to vote to "citizens of the United States") (emphasis added); *see also Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 334 (1816) ("From this difference of phraseology, perhaps, a difference of constitutional intention may, with propriety, be inferred. It is hardly to be presumed that the variation in the language could have been accidental. It must have been the result of some determinate reason").

[25] 1 Farrand's Records at 542 (Pierce Butler).

[26] *Cf. Franklin v. Massachusetts*, 505 U.S. 788, 803–804 (1992) ("[I]nterpretations of the Constitution by the First Congress are persuasive").

[27] Act of Mar. 1, 1790, ch. 2, § 1, 1 Stat. 101 (emphases added); *see id.* § 1, 101 Stat. 101 (requiring enumeration of *all* free persons—whether or not White, and including women and indentured servants—as well as enslaved persons).

[28] *Id.* at § 4, 1 Stat. 102.

[29] *Id.* at § 5, 1 Stat. 103.

any "inhabitant" without a settled, usual place of abode should be allocated to the division "where he or she shall be on the" decennial census date.[30]

This practice has continued unchanged to the present. After the Civil War, the Framers of the Reconstruction Amendments knew and recognized that the constitutional rule and practice was for the census to enumerate, and the apportionment base to comprise, *all* persons resident in the United States, including noncitizens.[31] In that context they debated *and ultimately rejected* proposals to strike from the apportionment base "immigrants not naturalized" or otherwise change the apportionment base to voters, citizens, or some other subset of the population.[32] Instead, the Fourteenth Amendment hewed to the established constitutional practice of basing apportionment on total population, that is, persons, but now acknowledging the full personhood of formerly enslaved people.[33] The consistent practice and its reaffirmation in the text of the Fourteenth Amendment again foreclose the Bureau's revisionist interpretation.[34]

Lest any lingering doubt remain, recent case law *again* confirms that the Criteria's constitutional surmise is flatly wrong. As a starting point, the Bureau's supposition that the apportionment base must exclude some members of the population is incompatible with the "settled practice," "constitutional history," and judicial recognition that legislative districts may be drawn to have equal populations when measured by *total* population rather than by some subset.[35] And the Bureau's assertion that it may exclude the Omitted Noncitizens from the apportionment base cannot be squared with the Supreme Court's conclusion that a citizenship question (by which noncitizens might be excluded) does not "concern[] . . . *the population count*

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[30] *Id.*; *see id.* at § 4, 1 Stat. 102 (proviso explaining that the purpose of Section 5's "usual residence" rule was "to obviate all doubts which may arise respecting the persons to be returned, and the manner of making returns").

[31] *See, e.g.*, Cong. Globe, 39th Cong., 1st Sess. 432 (Jan. 25, 1866) (statement of Rep. Bingham) ("Under the Constitution as it is now and as it has always been, the entire immigrant population of this country is included in the basis of representation."); *see also id.* at 353 (Jan. 22, 1866) (statement of Rep. Rogers); *id.* at 359 (statement of Rep. Conkling); *id.* at 2944 (June 4, 1866) (statement of Sen. Williams); *id.* at 2944 (June 4, 1866) (statement of Sen. Edmunds).

[32] Cong. Globe, 39th Cong., 1st Sess. 535, 538 (Jan. 31, 1866) (proposal to apportion based on voters defeated 131-29 in the House); *id.* at 2991 (June 6, 1866) (proposal defeated 31-7 in the Senate); *see generally* William W. Van Alstyne, The Fourteenth Amendment, the "Right" to Vote, and the Understanding of the Thirty-Ninth Congress, 1965 Sup. Ct. Rev. 33, 45-48; *see also, e.g.*, Cong. Globe, 39th Cong., 1st Sess. 141 (Jan. 8, 1866) (statement of Rep. Blaine); *id.* at 359 (Jan. 22, 1866) (statement of Rep. Conkling); *id.* at 432 (Jan. 25, 1866).

[33] *Evenwel v. Abbott*, 578 U.S. 54, 67 (2016) ("The product of the[] debates" among members of the 39th Congress "was § 2 of the Fourteenth Amendment, which retained total population as the congressional apportionment base.").

[34] *Dep't of Commerce v. New York*, 588 U.S. 752, 770 (2019) (describing how constitutional interpretation related to the census is informed by "the early understanding of and long practice under the Enumeration Clause," and "[t]hat history matters"); *accord Wisconsin v. City of New York*, 517 U.S. 1, 21 (1996) (noting importance of historical practice to constitutional interpretation related to the census) (citing *Franklin*, 505 U.S. at 803–806).

[35] *Evenwel*, 578 U.S. at 73.

itself," but is only a "demographic question[]" *unrelated* to the enumeration of the apportionment base.[36]

Against this unambiguous constitutional meaning, the Criteria offers a hodgepodge of citations and parenthetical quotes that the Bureau contends equate the constitutional terms "person" and "inhabitant," treat "inhabitant" as synonymous with domiciliary (that is, a person with an intent to remain indefinitely), and suggests domiciliary status is the key to membership in "the body politic."[37] The Bureau's syllogism is built on false and foreclosed premises. As an initial matter, the Criteria is wrong to equate "person" and "inhabitant." Careful review of constitutional text and context reflects that in the Constitution, as in contemporaneous dictionaries, the term "Inhabitant" refers to persons *with respect to their current residence*—not all persons, and not domiciliaries.[38] And the Supreme Court's recent decision in *Trump v. Barbara*—which construed the Citizenship Clause of the Fourteenth Amendment—forecloses the Bureau's core position that individuals without "sufficient tie and allegiance to the United States" are not "persons" for purposes of the Fourteenth Amendment. Indeed, the starting point for *both* the majority and dissents in *Barbara* is that the term "person" in the Citizenship Clause is broad and expansive, and includes human beings *without regard* to their domicile *or* their allegiance. The very reason the *Barbara* dissents rely so heavily on theories of domicile and primary allegiance to limit the modifying phrase "subject to the jurisdiction thereof" is that the unmodified term "person" is otherwise *so* universal as to include even those individuals who might inherit from their parents a "domicile" in or a "primary allegiance" to another country,[39] or subjection to a foreign power.[40]

The Criteria's rationale mirrors the dissents in *Barbara*: a person must be excluded from the apportionment base, the Bureau contends, unless they can show "allegiance, durable permission from the sovereign to settle within the United States, and establishment of domicile

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[36] *Dep't of Commerce*, 588 U.S. at 769.

[37] Criteria, 91 Fed. Reg. at 57526.

[38] U.S. Const. art. I, § 2, cl. 2 (to qualify for the House a person must, "when elected, be an Inhabitant of that State"); *id.* § 3, cl. 3 (similar for Senate); U.S. Const. amend. XIV, § 2 (State's representation reduced to the extent the State denies the right to vote to United States citizens who are "male inhabitants of such State"); *Inhabitant*, John Ash, The New and Complete Dictionary of the English Language, Vol. 1, 1775 ("[a] dweller; one that resides in a place"); *Inhabitant*, Samuel Johnson, A Dictionary of the English Language (6th ed. 1785), at 1043 ("Dweller; one that lives or resides in a place"), https://dn710105.ca.archive.org/0/items/dictionaryofengl01johnuoft/dictionaryofengl01johnuoft.pdf [https://perma.cc/AS8S-9EN3]; *Inhabitant*, Noah Webster, American Dictionary of the English Language (1865), at 770 ("[o]ne who dwells or resides permanently in a place, or who has a fixed residence, as distinguished from an occasional lodger or visitor; as, the *inhabitant* of a house or cottage; the *inhabitants* of a town, city, county, or state"), https://dn721608.ca.archive.org/0/items/americandictiona00websuoft/americandictiona00websuoft.pdf; *Inhabitant*, Merriam-Webster, https://www.merriam-webster.com/dictionary/inhabitant ("one that occupies a particular place regularly, routinely, or for a period of time.") (all last accessed Nov. 2, 2026).

[39] *Barbara,* 146 S. Ct. at 2479–2484, 2506 (Thomas, J., dissenting).

[40] *Id.* at 2538, 2544 (Alito, J., dissenting).

within the United States."[41] The Criteria asserts that personhood for apportionment purposes turns on domicile because domiciliary status establishes some unspecified but somehow essential level of "allegiance."[42] Similarly, the *Barbara* dissents posit that "'the United States' conception of allegiance'—at some unspecified point in time—broke 'from Great Britain's'" by requiring "some greater quantum of allegiance" and now "turn[s] on domicile—the place of one's permanent home"—because "domicile is the key concept that creates allegiance."[43]

At the outset, the Bureau's rationale is misplaced. The *Barbara* dissents invoked concepts of domicile and personal allegiance *not* to interpret the term "person" but instead to construe the phrase "subject to the jurisdiction thereof" in the Citizenship Clause. And Section 2 of the Fourteenth Amendment, which deals with apportionment, does not refer to jurisdiction to define or modify the term "person"—further suggesting that "person" is to be understood in its plain (and expansive) meaning. In any event, the view shared by the dissents and the Criteria is *precisely* what the *Barbara* majority rejects: Under the common law, an individual owes allegiance not only to the sovereign of her place of birth, but also to the sovereign of the place she lives "for so long [a] time as she continue[s] in [that] territory," simply by virtue of "her presence."[44] And "[a]historical modifiers aside," *no* historical source "in the period from 1776 to 1868" supports tying allegiance to domicile, as the dissent attempted and the Criteria would do.[45] In short, *every* source of constitutional meaning rejects the Criteria's view and none supports it.

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[41] Criteria, 91 Fed. Reg. at 57526.

[42] *Id.* at 57525-26 (asserting that a noncitizen "could not qualify as an 'inhabitant,' at the time of the Founding," and therefore a "person" under the Enumeration and Apportionment Clauses, "without establishing a residence within a jurisdiction and an intent to remain there indefinitely").

[43] *Barbara,* 146 S. Ct. at 2453 (describing dissents).

[44] *Id.* at 2453, 2446 n.2 (alterations in original omitted).

[45] *Id.* at 2454. To be sure, *Barbara* concerns the Citizenship Clause, not the Apportionment Clause. But the Proposed Criteria purports to define the unmodified term "persons" for the Apportionment Clause without any suggestion that that single word has two, or perhaps more, different meanings across the five times it appears in the Fourteenth Amendment. To the contrary, the breadth of the term "person" inheres not only to the Citizenship Clause, but also the Due Process and Equal Protection Clauses. *See Yick Wo v. Hopkins*, 118 U.S. 356, 368–69 (1886) (describing how those Clauses' references to "any person" demonstrate "[t]hese provisions are universal in their application, to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or of nationality," and extend to "every citizen of the United States equally with those of the strangers and aliens" in the case at bar, who "are aliens and subjects of the emperor of China"). And the term's breadth for purposes of Section 3 of the Fourteenth Amendment is self-evident, since that provision applies to anyone who might hold "any office, civil or military, under the United States, or under any State." U.S. Const., amend. XIV, § 3.

2. The Criteria Exceeds the Bureau's Power

"Additionally and/or in the alternative," the Bureau seeks refuge for its constitutional misinterpretation in a misreading of its "discretion" under *Franklin v. Massachusetts*.[46] This turn, too, is unavailing.

Franklin involved the Bureau's determination to *include* in the apportionment count individuals who were undisputedly temporarily stationed overseas. Specifically, the Bureau had determined that the "usual residence" of military personnel whom the federal government had temporarily stationed overseas would be the "home States" that each servicemember had designated in their military personnel file. No party contested that those personnel lived in the United States when not stationed overseas and that they were "persons" to be included in the decennial census enumeration.[47] Instead, the dispute was whether the Bureau could decide that these servicemembers had "retained their ties to their home States" strongly enough to be allocated to their home States (rather than their overseas stations) for the apportionment count despite their temporary absence on the decennial census date.[48] *Franklin* answered in the affirmative: because the *Court* interpreted the Apportionment Clause to permit the inclusion of "'person[s] occasionally absent at the time of the enumeration,'" thus allowing the Bureau to count the overseas military personnel, it was left to the Bureau's discretion *where* to allocate them.[49]

Nothing in *Franklin* could remotely be read to imply that individuals who are present in the United States (unlike the servicemembers in that case) must demonstrate "ties to their home States" as a constitutional precondition for inclusion in the apportionment count. Nor does this case allow the Bureau to arrogate the power of the judiciary to set the contours of who constitutes a "person" for purposes of the Enumeration and Apportionment Clauses. Were it otherwise, the Bureau would effectively have administrative power to set—and change at will—the fundamental meaning of the constitutional phrase "the whole number of persons in each State, excluding Indians not taxed," and thus the scope of the apportionment base by which political power is allocated under the Constitution. That is an untenable and unconstitutional reading.[50]

What is more, even as it claims *Franklin*'s protection, the Criteria abandons that case's core interpretive premise. The Bureau now claims the term "inhabitant" is synonymous with

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[46] Criteria, 91 Fed. Reg. at 57526 (citing *Franklin v. Massachusetts*).

[47] *See Franklin,* 505 U.S. at 803–804 (indicating that parties disputed whether to allocate personnel to their home States or their overseas stations).

[48] *Id.* at 806.

[49] *Id.* at 804–806.

[50] *See generally Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 384–85, 392 (2024) (explaining that the Framers intended for courts to have final authority to interpret and settle meanings of the laws and that the APA instructs courts, not agencies, to "'interpret constitutional and statutory provisions'" (quoting 5 U.S.C. § 706)); *see also Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

"person" and thus "denote[s] *who* counts for purposes of apportionment."[51] But *Franklin* said otherwise: it held that "inhabitant" (like the phrases "usual place of abode" and "usual residence") elaborates the phrase "in each State," *not* the term "person."[52] In short, whatever discretion the Bureau may have to determine *where* to allocate a person for apportionment purposes, it categorically does not have the power to decide *whether* to count them in the first place.

In any case, the Criteria would be unlawful *even if* there were a colorable basis to discard two and a half centuries of consistent constitutional understanding of the scope of the apportionment base. The Bureau's discretion—like the Bureau itself—arises not from the Constitution itself but from statute. And whatever limits might apply to *Congress's* discretion regarding the census,[53] it is unequivocal that the Bureau can drift no further than permitted by the statutes *actually enacted* by Congress.[54] Today's governing statutes continue to reflect a consistent and enduring congressional understanding that the Apportionment and Enumeration Clauses use the term "person" to refer to *all* individuals and contemplate an apportionment based on all individuals who reside in the United States. In particular, the Census Act confirms and reiterates Congress's longstanding view that the constitutional phrase "persons in each State" means *all* individuals who reside in the United States, without regard to their immigration status (or lack thereof). To that end, the Census Act says the "decennial census of population," is "[t]he tabulation of *total population* by States . . . as required for the apportionment of Representatives in Congress among the several States."[55] The Apportionment Act, also echoing the constitutional text, both asserts and operationalizes the requirement that apportionment be based on "the whole number of persons in each State, excluding Indians not taxed, as ascertained under the . . . decennial census of the population."[56] There is every reason to construe that statute as including all persons resident in the United States, *especially* because both houses of Congress specifically considered *and rejected* amendments that would have excluded undocumented persons from the apportionment basis.[57] Accordingly, the Criteria's contrary rule exceeds the Bureau's own authority—*regardless* of whether it also offends the Apportionment Clause and the Fourteenth Amendment.

For similar reasons, the Criteria reflects an attempt by the Executive to unconstitutionally arrogate legislative authority over the census. The Constitution vests legislative authority in

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[51] Criteria, 91 Fed. Reg. at 57526.

[52] *Franklin*, 505 U.S. at 804–805.

[53] *See Wisconsin*, 517 U.S. at 19 (describing Congress's discretion over conducting the decennial census as not "more limited than the text of the Constitution provides").

[54] *See Loper Bright*, 603 U.S. at 395, 401.

[55] 13 U.S.C. § 141(a), (b) (emphasis added).

[56] 2 U.S.C. § 2a(a).

[57] *See, e.g.*, *City of San Jose v. Trump*, 497 F. Supp. 3d 680, 691–92 (N.D. Cal.) (discussing proposals and Congress's rejection of same), *vacated on other grounds and remanded*, 592 U.S. 1160 (2020); *see also* Cong. Research Serv., R41048, *supra* note 15, at 11-13.

Congress, not Executive Branch agencies. Congress has exercised that authority through the Census Act and Apportionment Act to delimit the boundaries of the census count. By seeking to promulgate a rule that purports to establish law and exceed any authority granted *to* Congress or delegated *by* Congress, the Bureau violates the constitutional separation of powers.[58]

C. The Bureau's Proposal to Exclude the Omitted Noncitizens from the Decennial Census Apportionment Count is Arbitrary and Capricious

The Bureau's proposed exclusion of the Omitted Noncitizens from the census count is also arbitrary and capricious on multiple fronts. One of the basic requirements of administrative rulemaking is that an agency "must give adequate reasons for its decisions," including "examin[ing] the relevant data and articulat[ing] a satisfactory explanation for its action."[59] And agencies that change positions must "provide a reasoned explanation for the change."[60] This is especially true where the "prior policy has engendered serious reliance interests," because "[i]t would be arbitrary or capricious to ignore such matters."[61] In engaging in rulemaking, an agency can neither "rel[y] on factors which Congress has not intended it to consider" nor simply ignore "an important aspect of the problem[.]"[62]

1. The Bureau Failed to Consider the Impacts of its Proposal on Census Response Rates

To achieve a complete and accurate census count, the Bureau relies on residents to respond to the decennial census questionnaire form. As the Bureau acknowledges, some groups, like undocumented immigrants, racial and ethnic minorities, and populations with limited English proficiency, are hard to count and require additional outreach from the Bureau and its partners.[63] The decennial census also historically undercounts certain ethnic groups that include significant immigration populations—particularly individuals identifying as Hispanic or Latino.[64] Yet neither the Criteria nor the accompanying PRIA meaningfully addresses the impact of the Bureau's proposal on census response rates. Despite the extensive data, testimony, and

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[58] U.S. Const. art. 1, § 1 (vesting Congress with "[a]ll" of the federal government's "legislative Powers"); *Clinton v. City of New York*, 524 U.S. 417, 438 (1998) ("There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.").

[59] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 211 (2016).

[60] *Id*.

[61] *F.C.C. v. Fox Television Stations, Inc*., 556 U.S. 502, 515 (2009).

[62] *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co*., 463 U.S. 29, 43 (1983).

[63] U.S. Census Bureau, *2030 Census Operational Plan* (V1.0 July 2025), at 13, https://www2.census.gov/programs-surveys/decennial/2030/program-management/planning/operational-plan/2030-census-operational-plan.pdf [https://perma.cc/QZ3B-ETWY].

[64] Eric Jensen & Timothy Kennel, *Detailed Coverage Estimates for the 2020 Census Released Today*, U.S. Census Bureau (Mar. 10, 2020), https://www.census.gov/library/stories/2022/03/who-was-undercounted-overcounted-in-2020-census.html [https://perma.cc/4HCM-5X3V] (noting a statistically significant undercount of the Hispanic/Latino population in both the 2020 and 2010 censuses).

other forms of evidence of which the Bureau is undoubtedly aware, the Criteria does not so much as *acknowledge* the plainly obvious likelihood that linking census response rates to immigration status would generate a differential undercount (i.e., the difference in the magnitude of the undercount across groups) and thus produce an inaccurate enumeration. Certainly, the Criteria does not consider how, if at all, such a result could be squared with the "strong constitutional interest in accuracy"[65] or the Bureau's own statutory "duty to conduct a census that is accurate."[66]

The Bureau proposes to determine respondents' citizenship status either using administrative records or by adding a question on citizenship to the census questionnaire. But either option is likely to harm response rates among households with noncitizens. For example, when the first Trump Administration attempted to exclude undocumented immigrants from the apportionment count using administrative records, the announcement sowed confusion and fear in immigrant communities about participating in the census. Families—including mixed-status families made up of both citizen and noncitizen members—expressed fears of their census responses being linked to immigration records and being used for immigration enforcement.[67]

Those fears are likely to be enhanced by this Administration's widescale—and often unlawful—sharing of sensitive, flawed, and even concededly inaccurate or unreliable government data in order to identify purported noncitizens for enforcement purposes.[68] Notwithstanding the statutory privacy protections for census data, households with noncitizen family members will justifiably fear that attempts to link census responses with immigration

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[65] *Utah v. Evans*, 536 U.S. 452, 455–56 (2002).

[66] *Dep't of Commerce*, 588 U.S. at 773.

[67] *See, e.g.*, *New York v. Trump*, 485 F. Supp. 3d 422, 447–451 (S.D.N.Y. 2020), *rev'd on other grounds*, 592 U.S. 125 (2020) (surveying extensive record evidence, including fact and expert declarations, demonstrating that the first Trump Administration's effort to link census responses to immigration status using administrative records had a "deterrent effect on participation in the decennial census, particularly among noncitizens, immigrants, and their family members," including mixed-status families).

[68] *See, e.g.*, Muzaffar Chishti & Colleen Putzel-Kavanaugh, *Seeking to Ramp Up Deportations, the Trump Administration Quietly Expands a Vast Web of Data*, Migration Policy Institute (May 29, 2025), https://www.migrationpolicy.org/journal/policy-beat/seeking-ramp-deportations-trump-administration-quietly-expands-vast-web-data [https://perma.cc/ALR3-674H]; *see also Center for Taxpayer Rights v. IRS*, 190 F.4th 990 (D.C. Cir. Sept. 8, 2026) (upholding injunction against sharing of IRS data with ICE); *California Nurses Ass'n v. Mullin*, No. 26-cv-10680-AMO, 2026 WL 3166149, at *2, *8 (N.D. Cal. Oct. 21, 2026) (highlighting inaccuracies in DHS's efforts to assemble list of potential noncitizen voters); *Common Cause v. U.S. Dep't of Justice*, --- F. Supp. 3d ----, 2026 WL 3033772, at *33 (D.D.C. Oct. 9, 2026) (discussing inaccuracies in Department of Justice's attempts to verify citizenship); *League of Women Voters v. DHS*, 835 F. Supp. 3d 79, 95, 101, 109–110, 113 (D.D.C. 2026) (stating that DHS's Systematic Alien Verification for Entitlements (SAVE) database contains "citizenship data that [DHS, SSA, and other agencies] knew to be unreliable" and that the record before the court "abounds" with evidence that SSA disclosed "inaccurate" information about individuals' citizenship), *stayed on other grounds sub. nom.*, *DHS v. League of Women Voters*, No. 26A308, 609 U.S. ___, 2026 WL 2879700 (U.S. Sept. 25, 2026).

status will lead to immigration enforcement. These families will undoubtedly be deterred from participating in the decennial census count as a result of the Criteria.

The inclusion of a question about census respondents' legal status on the decennial census form—which the Bureau indicates is also under consideration and may already be testing[69]—will harm census response rates at least as much. There is consistent and unequivocal evidence that strongly undercuts inquiring about citizenship on the decennial census form because doing so will jeopardize the accuracy of the population count. Prior to the first Trump Administration's unsuccessful attempt to add a citizenship question to the 2020 Census, the Bureau for decades emphasized that a citizenship question would seriously jeopardize the accuracy of the census.[70] Even during the first Trump Administration, the Bureau's own chief scientist acknowledged that the "bulk of the evidence suggests that the citizenship question is likely to be responsible for the decline in self-response" among noncitizen households.[71] And recent analyses from the Bureau confirm that "including a citizenship question on a decennial census would increase the differential undercount . . . of the likely undocumented population relative to U.S.-born non-Hispanic Whites."[72] There is every reason to expect that inquiring about legal status will produce *at least* as significant a differential undercount. While identifying one's citizenship does not actually indicate whether a census respondent is subject to removal—because noncitizens may hold many lawful statuses—it is entirely reasonable for census respondents to believe that identifying their legal status could make them a target for immigration enforcement actions.

The Localities' experience bears out the risk that linking census responses to immigration status will generate fear and chill self-response rates. For example, in the lead-up to the 2020 Census, community groups in San Francisco raised concerns that immigrants were afraid to

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[69] Hansi Lo Wang, *Trump officials propose testing a citizenship question amid a push to alter the census*, NPR (Feb. 5, 2026), https://www.npr.org/2026/02/05/nx-s1-5584085/census-citizenship-question [https://perma.cc/QDD9-ZJX2].

[70] *See, e.g.*, *Dep't of Commerce*, 588 U.S. at 761("The Census Bureau and former Bureau officials have resisted occasional proposals to resume asking a citizenship question of everyone, on the ground that doing so would discourage noncitizens from responding to the census and lead to a less accurate count of the total population.") (citations omitted); *see also Fed'n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 568 (D.D.C. 1980); Census Equity Act: Hearings Before the Subcomm. on Census & Population of the H Comm. on Post Office & Civ. Serv., l01st Cong. 43-45 (1989) (statement of C. Louis Kincannon, Deputy Director, Census Bureau); Exclude Undocumented Residents from Census Counts Used for Apportionment: Hearing Before the Subcomm, on Census & Population of the H Comm. on Post Office & Civil Serv., l00th Cong. 50-51 (1988) (testimony of John Keane, Director, Census Bureau); Counting the Vote: Should Only US. Citizens Be Included in Apportioning Our Elected Representatives?: Hearing Before the Subcomm. on Federalism & the Census of the H Comm. on Gov't Reform, 109th Cong. 73 (2005) (statement of Kenneth Prewitt).

[71] *New York v. Dep't of Commerce*, 351 F. Supp. 3d 502, 580 (S.D.N.Y. Jan. 15, 2019) (quoting testimony of Census Bureau Chief Scientist), *aff'd in part and reversed in part*, *Dep't of Commerce v. New York*, 588 U.S. 752 (2019).

[72] J. David Brown & Misty Heggeness, *Citizenship question effects on household survey response*, Journal of Policy Analysis and Management 45:e70004 (2025), at 2-3, https://onlinelibrary.wiley.com/doi/10.1002/pam.70004.

complete the census questionnaire because of concerns that their information would be shared for purposes of enforcement.[73] These fears persisted when the first Trump Administration announced that it would attempt to exclude undocumented immigrants from the apportionment base.[74] Similarly, the proposed inclusion of a citizenship question in the 2020 Census impacted the response rate among Seattle's immigrant and refugee communities. Even though the question was ultimately not included, the proposal affected trust in government, willingness to participate, and ultimately the census count. There were similar dynamics in many other local communities, including in Santa Clara and San José.[75] Based on empirical survey data, experts analyzing the effects of the first Trump Administration's efforts to add a citizenship question to the 2020 Census estimated that between 12 and 18 percent of the population of California wase likely not to respond.

It is unlikely that the Bureau would be able to remedy the decline in self-response rates generated by the Criteria. As the former Chief Scientist of the Bureau testified in the context of the first Trump Administration's attempt to add a citizenship question, the "increase in cost and degradation of the [census] data cannot be remediated" by Bureau enumerators through non-response follow up ("NRFU") operations.[76] It is also unlikely that the Bureau would be able to use administrative records to ameliorate the decline in self-response, particularly for many hard-to-count groups such as undocumented immigrants who may be absent from administrative record data.[77]

A differential undercount would also undermine the Bureau's ability to accurately and completely enumerate citizens and lawful permanent residents, thus undermining the Bureau's own proffered (but unlawful) goal of counting all and only those persons. For example, mixed-status families, which include both citizens and noncitizens (and often include lawful permanent residents), are likely to be deterred from responding in light of the Bureau's proposal to link census responses with immigration status through administrative records or a question on the

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[73] Minutes of Oct. 7, 2019, San Francisco Immigrant Rights Commission Meeting, https://www.sf.gov/meeting--october-7-2019--october-7-2019-irc-meeting [https://perma.cc/XL4J-D63J].

[74] Minutes of Aug. 10, 2020, San Francisco Immigrant Rights Commission Meeting, https://www.sf.gov/meeting--august-10-2020--august-10-2020-irc-meeting [https://perma.cc/44VA-9GN3].

[75] *See, e.g.*, Nadia Lopez, 2020 census citizenship debate erodes trust in Santa Clara County, San Jose Spotlight (Jul. 15, 2019), https://sanjosespotlight.com/2020-census-citizenship-debate-erodes-trust-in-santa-clara-county [https://perma.cc/EDL2-27KX].

[76] Tara Bahrampour, *In Md. Census trial, Trump administration tries to show citizenship question would not harm the 2020 census count*, Washington Post (Jan. 31, 2019), https://www.washingtonpost.com/local/social-issues/in-md-census-trial-trump-administration-tries-to-show-citizenship-question-would-not-harm-the-2020-count/2019/01/31/2166194c-25a8-11e9-90cd-dedb0c92dc17_story.html; *see also New York*, 351 F. Supp. 3d at 584–85.

[77] Kim Herbert, *The Census Bureau Must Improve Coverage of Historically Undercounted Communities in Administrative Data Linkage Projects*, Georgetown Law Center on Poverty and Inequality (Dec. 13, 2023), https://www.georgetownpoverty.org/issues/the-census-bureau-must-improve-coverage-of-historically-undercounted-communities-in-administrative-data-linkage-projects [https://perma.cc/C4GD-NVTE].

census form itself.[78] This would have a significant impact on the census count—including on the Bureau's desired goal of only counting citizens and lawful permanent residents. An estimated 30.8 million residents, including 12.5 million U.S. citizens, live in mixed-status families across the United States.[79] These families are not evenly distributed across the country. Instead, states like California and New York, which are home to several of the Localities, have a significant concentration of mixed-status families.[80] A substantial number of residents in the Localities live in mixed-status families.[81] Many of the Localities are therefore at particular risk of a differential undercount.

2. The Bureau Failed to Account for Reliance Interests and the Myriad Harms to Local Jurisdictions

The Criteria represents a radical departure from over two centuries of decennial census practice. Therefore, the Bureau is obligated to consider serious reliance interests and the harms that will flow from its proposed course of action. Indeed, few, if any, policies have engendered as wide-ranging, longstanding, and serious a set of reliance interests than the enumeration of the *total* population in the decennial census. The failure to count the *total* population will have profound ripple effects. The decennial census provides foundational data for self-governance at the local, state, and federal levels, including to draw federal, state, and local electoral districts. It is also "a 'linchpin of the federal statistical system'" used by policymakers, researchers, scientists, and others. [82] And it is critical to the Localities' ability to deliver critical governmental services to their residents. The Bureau's abject failure to acknowledge (let alone consider) these reliance interests and harms is breathtakingly irresponsible.

a. Political Representation

The Criteria will have a deleterious impact on political representation for the Localities and their residents.

To begin with, the Bureau's proposal is likely to shift political power in a manner that harms many Localities. Under the Bureau's proposal, states with the largest noncitizen

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[78] *New York*, 485 F. Supp. 3d. at 448.

[79] *Nearly 1 in 10 American residents, or more than 1 in 4 Latinos, are at risk of deportation or family separation*, Fwd.us (June 2, 2026), https://www.fwd.us/news/mixed-status-families/ [https://perma.cc/975N-6CUS].

[80] *See, e.g.*, State of California, Immigration and California families, https://www.ca.gov/immigration [https://perma.cc/6SSN-J875] (estimating that 20 percent of children in California live in mixed-status families) (last accessed Nov. 2, 2026); *see also* Silvia Mathema, *State-by-State Estimates of the Family Members of Unauthorized Immigrants*, Center for American Progress (Mar. 16, 2017), https://www.americanprogress.org/article/state-state-estimates-family-members-unauthorized-immigrants [https://perma.cc/UWZ9-TK7Q].

[81] *Supra* note 11.

[82] *Dep't of Commerce*, 588 U.S. at 770 (quoting *Dep't of Commerce v. United States House of Representatives*, 525 U.S. 316, 341 (1999)).

populations, like California and New York, may lose representation in Congress. Localities in these states—including San Francisco, Santa Clara, Los Angeles, San Mateo, San José, New York City, and others—stand to have their political power diminished as a result of the Criteria.

Moreover, many Localities depend on accurate census data to draw local election boundaries. These districts must be drawn with equal populations, and the Supreme Court has held that it is "plainly permissible for jurisdictions to measure equalization by the total population of state and local legislative districts."[83] Localities therefore rely on census total population data to meet their constitutional obligation to draw legislative districts with equal total populations.[84] Indeed, legislative redistricting for local governments often expressly requires that population equality be measured by total population as measured by the decennial census,[85] and expressly rely on the tabulation of local populations that the Bureau is statutorily obligated to prepare at localities' request under 13 U.S.C. § 141(c).[86] The Localities' reliance on census data that accurately counts the whole population for purposes of drawing election districts will be impaired by the Criteria's proposal to exclude the Omitted Noncitizens.

b. Local Government Services

Local governments rely heavily on accurate total population data derived from the decennial census to carry out their fundamental, frontline responsibility to protect "the lives, limbs, health, comfort, and quiet of all persons."[87] Total population data from the census drives policy decisions, resource allocations, and daily operations across a huge range of critical governmental functions, including public health and safety, infrastructure planning, and emergency planning, response, and recovery. The indisputable reality is that noncitizens of many

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[83] *Evenwel*, 578 U.S. at 64.

[84] *See, e.g.*, San Francisco, Cal., Charter § 13.110; *see also* City of Los Angeles, Cal., Charter §§ 480 *et seq.*; San José, Cal., Charter § 403; Seattle City Charter Art. IV, § 2; Nashville & Davidson Cnty., Tenn., Code § 18.06; Hennepin Cnty., Minn., Redistricting Principles ¶¶ 1, 2 (2022); New York, NY, Charter § 52(1)(a); Boston, Mass. Charter § 18; Baltimore, Md., Charter § 7.

[85] *See, e.g.*, Cal. Elec. Code § 21130(a) ("total population of residents" shall be apportionment base for legislative redistricting for all cities, counties, offices of education, school districts, community college districts, and other entities whose legislative bodies are elected by district); *see also* N.M. Stat. Ann. § 1-3-13 (for local public bodies' districts, "the number of persons in each district, as shown in the most recent federal decennial census, [shall be] as nearly equal in population as practical"); Wash. Rev. Code § 29A.76.010(1); Minn. Stat. § 2.93.

[86] 13 U.S.C. § 141(c) is the codification of Public Law 94-171. Many state and local laws refer to these local tabulations by the Public Law number. *See* Cal. Elec. Code § 21130(a)(1) (for local legislative redistricting, "Population equality shall be based on the total population of residents of the local jurisdiction as determined by the most recent federal decennial census for which the redistricting data described in Public Law 94-171 are available"); *see also* Minn. Stat.§ 2.93 (requiring that state and local redistricting be based on "Public Law 94-171 data from the United States Census Bureau" as modified to account for incarcerated persons); N.M. Stat. Ann. § 1-3-11 (purpose of New Mexico redistricting law is to obtain and use Pub. L. 94-171 data from the Census Bureau "in order to obtain an enumeration of the populations of election precincts").

[87] *Slaughter-House Cases*, 836 U.S. (16 Wall.) 36, 62 (1872).

different immigration statuses are, and will continue to be, residents of local communities. And the Localities, and other local governments, plan their governmental services to meet the needs of all residents—citizen and noncitizen alike.

Accuracy of census data is essential for governmental responses to emergencies and natural disasters.[88] Every Locality—like every State and the federal government—depends on census data to develop plans for and prepare to meet, respond to, and recover from these crises. Santa Clara's Emergency Operations Plan is illustrative. Citing census data, it asserts: "Understanding the population's composition is crucial for identifying and addressing the needs of individuals who may require additional support during emergencies."[89] The City of Los Angeles' Emergency Operations Plan—including the Base plan and the Annex plans—cites to census data dozens of times, including with respect to emergency planning for vulnerable populations, which include people with disabilities, access, and functional needs.[90] Similarly, New York City uses census-based population counts to estimate populations living in coastal storm evacuation zones. Small-area population data is needed for this work, relying on decennial data at the census block level.[91] This information is used to plan the number of people evacuating as well as the locations and capacities of a large-scale shelter system for emergency-affected populations. Census data informs how many people to expect at each location, the traffic and vehicle demand on critical roadways to move people during an evacuation, how many beds, and how much food, water, and emergency equipment would be needed to serve residents. Lack of a full population count would severely hamper these critical planning efforts.

Federal emergency planning has likewise relied on total population census data for so long across so many emergency-management agencies that the census tract is the essential and nearly universal unit of analysis across many modes of emergency planning. That is true for the

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[88] Denice Ross & Christopher Steven Marcum, *Federal Data Help Communities Prepare for, Respond to, and Recover from Hurricanes. Data Terminations Will Make Them More Deadly*, Federation of American Scientists (Sept. 8, 2026), https://fas.org/publication/federal-data-hurricanes-terminations [https://perma.cc/D52A-DQTB].

[89] Resolution of the Board of Supervisors of the County of Santa Clara Approving the 2025 County of Santa Clara Emergency Operations Plan, No. BOS-2025-122 (Nov. 4, 2025), at 42, https://files.santaclaracounty.gov/exjcpb1566/2026-01/santa-clara-county-oem-eop-263440-1.pdf [https://perma.cc/8RVB-FQ9D]; *see generally* Cnty. of Santa Clara, Cal., Emergency Operation Plan and Annexes, https://oem.santaclaracounty.gov/partners#eop (last accessed Nov. 2, 2026).

[90] *See* City of Los Angeles, Cal., Emergency Plans & Annexes, https://emergency.lacity.gov/emergency-plans-annexes (last accessed Nov. 2, 2026).

[91] "Census blocks [are] the smallest geographic area for which the Bureau of the Census collects and tabulates decennial census data." U.S. Census Bureau, Geographic Areas Reference Manual 11-1 (1994), https://www2.census.gov/geo/pdfs/reference/GARM/Ch11GARM.pdf [https://perma.cc/L84Z-E86N]; *see* U.S. Census Bureau, Geography Program Glossary (last revised Oct. 20, 2026), https://www.census.gov/programs-surveys/geography/about/glossary.html [https://perma.cc/PX6U-GSUP] ("Blocks nest within all other tabulated census geographic entities at the time of the decennial census and are the basis for all tabulated data from that census.").

FEMA National Risk Index, which identifies communities at risk of natural hazards[92] and is the backbone for many state and local governments' emergency management and hazard mitigation plans;[93] the standardized Hazards U.S. model, or Hazus, which FEMA develops, maintains, and distributes as software to state and local governments to manage and develop their own hazard mitigation plans;[94] and the Bureau's own Community Resilience Estimates, which "track[] how socially vulnerable every single neighborhood in the United States is to the impacts of COVID-19 and other local disasters" and thus helps FEMA gauge the number of people particularly vulnerable to disasters like these because they are more "at risk."[95]

Localities' public health efforts also depend on accurate census population counts because that data is the backdrop against which public health officials assess community vulnerability. For example, when the Santa Clara Public Health Department conducted a community assessment in 2024 of emergency response related to climate change and emergency preparedness, it used a combination of census block data from the ACS and the decennial census to identify sampling frames, determine the number of households to survey, and ensure that questionnaires would be language-accessible to residents.[96] The Public Health Departments of San Francisco and Santa Clara also rely on population data to track the incidence of various

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[92] FEMA, National Risk Index Data, Technical Documents (Dec. 2025), at 3-1 (PDF page 36), 2-6 (PDF page 34), https://www.fema.gov/sites/default/files/documents/fema_national-risk-index_technical-documentation.pdf [https://perma.cc/3W8Q-68M6] ("All Risk Index Values are calculated at the Census tract level.").

[93] *See, e.g.*, Cal. Office of Emergency Servs., California State Hazard Mitigation Plan, Vol. 1 (2023), at 4-5 (PDF page 102), https://www.caloes.ca.gov/wp-content/uploads/Hazard-Mitigation/Documents/California-SHMP_Vol-1_Update_2.23.26_Full.pdf [https://perma.cc/T3Z2-TSMS].

[94] *See, e.g.*, Santa Clara County Multijurisdictional Hazard Mitigation Plan, Vol. 1, at 75 (Jul. 6, 2024), https://files.santaclaracounty.gov/exjcpb1566/2024-10/final-vol-i-santa-clara-county-mjhmp_7-26-2024.pdf (last accessed Nov. 2, 2026); *see also* FEMA, Hazus Hurricane Model Technical Manual Hazus 7.0 (June 2025), https://www.fema.gov/sites/default/files/documents/fema_rsl_hazus-7-hutm_06272025_0.pdf [https://perma.cc/49TE-625B]; FEMA, Hazus Flood Model Technical Manual Hazus 7.0 (June 2025), https://www.fema.gov/sites/default/files/documents/fema_rsl_hazus-7-fltm_06272025_0.pdf [https://perma.cc/LM6S-6ZM7]; FEMA, Hazus Inventory Model Technical Manual Hazus 7.0 (June 2025), https://www.fema.gov/sites/default/files/documents/fema_rsl_hazus-7-invtm_06272025_1.pdf [https://perma.cc/CW5V-8LQK].

[95] U.S. Census Bureau, 2024 Community Resilience Estimates: Detailed Technical Documentation 6, 18-19 (updated Jan. 29, 2026), https://www2.census.gov/programs-surveys/demo/technical-documentation/community-resilience/2024/cre_techdoc_2024.pdf [https://perma.cc/VAE9-AL7D]; *see generally* U.S. Census Bureau, About Community Resilience Estimates (Jan. 31, 2024), https://www.census.gov/programs-surveys/community-resilience-estimates/about.html [https://perma.cc/NZ5E-4JUM].

[96] County of Santa Clara Public Health Department, Community Assessment for Public Health Emergency Response (CASPER) Climate Change and Emergency Preparedness 8-10 (Jul. 2025), https://files.santaclaracounty.gov/exjcpb1751/2025-08/scc-casper-report-final.pdf.

health conditions, diseases, and overdoses in different parts of the community, so that they can better target services to affected communities.[97]

Planning and operation of local transit systems similarly relies on a census population count that accurately counts everyone. Where buses, trains, and paratransit vans run, where they stop, what hours of the day they run, and the frequency at which they run must accommodate the number of people who are actually physically present in the Localities and using those vehicles every day—regardless of their immigration status. For planning purposes, the most useful data are those that most accurately reflect all residents and workers. For example, San Francisco's Municipal Transportation Agency ("SFMTA") uses decennial census data on the number of residents living near transit routes and the characteristics of those residents in order to inform decisions about which routes to increase investment in, analyze how proposed service changes would impact San Franciscans, assess transit accessibility needs and provide adequate paratransit services, and guide long-term planning and capital investment decisions. If decennial census data do not accurately reflect the people who live and work in San Francisco, it will directly affect the SFMTA's ability to develop cost-effective transit service and invest in transit improvement that meet anticipated transportation needs.

Other essential services also rely on an accurate census count. In Boston, for example, city officials rely on an accurate count and household profile for public school and housing planning. The New York City Police Department uses population data from the census to determine staffing levels and resource allocation at the precinct level. Similarly, the San Francisco Police Department and the Baltimore Police Department each consider total population data from the decennial census when setting district station boundaries.[98] Having an incomplete count of the population would compromise local law enforcement agencies' ability to deploy public safety resources efficiently and effectively.

These examples illustrate the myriad ways that the Localities rely on accurate total population data to achieve the fundamental purpose of government, which is to protect and enhance the people's safety, health, and well-being. Excluding the Omitted Noncitizens from the census count will therefore undermine the Localities' ability to effectively deliver critical government services and meet the needs of their residents.

c. Federal Funding to Local Governments

Finally, accurate census data is critical to the allocation of federal funding, including to the Localities. At least 353 federal assistance programs use data from the 2020 Census to allocate

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[97] *See, e.g.*, County of Santa Clara Public Health Department, Overdose data in Santa Clara County, https://odfree.santaclaracounty.gov/overdose-data-santa-clara-county (noting use of ACS data to compute rates and ratios); *see also* County of Santa Clara Public Health Department, Respiratory virus data, https://publichealth.santaclaracounty.gov/health-information/health-data/respiratory-virus-data (also noting reliance on ACS data for COVID-related data analysis); San Francisco Community Health Assessment, 2024, at 9, 66 n.2, https://media.api.sf.gov/documents/2024_SF_CHA_Final_GJR0sJZ.pdf, archived at https://perma.cc/L72Z-88H5 (noting reliance on ACS data) (all last accessed Nov. 2, 2026).

[98] San Francisco, Cal. Admin. Code § 2A.86; Baltimore, Md. Code § 2-2(b).

over 2.8 trillion dollars in federal funding.[99] The Localities receive hundreds of millions of dollars of federal funding that is allocated by Congress based on Congress's reliance on current practices for gathering census data. Many of these funding streams support programs that serve *everyone* in the Localities' jurisdictions, regardless of citizenship status.

For example, programs like the Community Development Block Grant ("CDBG") program, HOME Investment Partnerships Program, and the Emergency Solutions Grant provide funding directly to localities based, in part, on their share of the overall population relative to other metropolitan areas, and their share of the population in poverty. The Localities use these funds to support affordable housing and anti-eviction services, homelessness assistance programs, neighborhood stabilization, and economic revitalization projects that benefit all Locality residents.

Critical transportation infrastructure funding is also allocated based in large part on population data, including billions of dollars distributed through the Highway Trust Fund program, the Federal Transit Administration Capital Investment Grants, the Federal Transit formula grants, the Urbanized Area Formula Funding program, the Metropolitan Planning program, and the Community Highway Safety program. Localities' streets, highways, and public transit infrastructure are used by everyone—not just citizens and lawful permanent residents. The same is true for emergency planning and homeland security grants Congress distributes through FEMA.[100]

The allocation of vital funding for social safety net services—including State Children's Health Insurance Program ("CHIP"), Head Start, Supplemental Nutrition Program for Women, Infants, and Children ("WIC"), Medicaid, Temporary Assistance for Needy Families ("TANF"), and Section 8 housing assistance—also depends on census data.[101] Similarly, safety net services targeted to serving individuals with HIV or AIDS—including the Housing Opportunities for Persons with AIDS ("HOPWA") Program and the Ryan White HIV/AIDS Program—are

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[99] Ceci Villa Ross, *Uses of Decennial Census Programs Data in Federal Funds Distribution: Fiscal Year 2021*, U.S. Census Bureau (June 2023), at 2, https://www2.census.gov/library/working-papers/2023/decennial/census-data-federal-funds-fy-2021.pdf [https://perma.cc/A7FS-CJXH]; *see also* National Research Council, *Modernizing the U.S. Census* (Barry Edmonston & Charles Schultze eds., National Academy Press 1995), at 280, https://www.nationalacademies.org/read/4805.

[100] Congress has directed FEMA to allocate funding for several grant programs based directly or indirectly on population and/or population density. *See, e.g.*, 6 U.S.C. § 608(a)(1) (Homeland Security Grant Program funding based on population and population density); *see also id.* § 762(d)(2) (most Emergency Management Performance Grant funding is allocated based on each state's share of the total population); 15 U.S.C. § 2229(c)(2), (j)(1)(B) (allocations and maximum amounts of Assistance to Firefighters grant funding based directly and indirectly on population).

[101] Some of these programs, such as WIC and Head Start, are allocated in part based on a state's share of the total U.S. population. Others, like Medicaid and CHIP, use the Federal Medical Assistance Percentage (FMAP) reimbursement formula which relies on per capita income (which in turn depends on population data). Some programs, like TANF, also require that states use census data to distribute funding to localities, including based on the number of low-income individuals residing in each jurisdiction. In all of these cases, accurate population data from the census drives how much money states and localities receive through these programs.

allocated in part based on the population of recipient local jurisdictions. Many of the Localities administer these federally funded social safety net programs within their jurisdictions. These critical funds support the well-being of the Localities' most vulnerable residents, including children in low-income families. Notably, even where Congress has chosen to limit the eligibility of noncitizens for some of these benefits programs, it has not limited that eligibility solely to citizens and lawful permanent residents.[102]

The Localities therefore have a strong reliance interest in accurate decennial census data to ensure that they receive an appropriate allocation of federal funding to fulfill their service obligations and meet the needs of all their residents. Despite the Bureau's proposal to remove the Omitted Noncitizens from the census count, those individuals remain residents of the Localities' communities and depend on local programs. As a result of the Bureau's proposal, the Localities will be allocated fewer funds that will be stretched thin to meet the needs of their residents, which will harm citizen and noncitizen residents alike.

d. The Chilling Effect of the Criteria Will Compound These Harms

As discussed above, the very exercise of attempting to connect census responses with immigration status (whether through administrative records or a legal status question) is likely to result in a differential undercount of households with noncitizens. Many of the Localities and the states in which they are located have significant noncitizen populations, *see* Part I.A above, and are particularly at risk of an undercount. The resulting degradation of census population data will impair their ability to draw local election boundaries and make important planning decisions and will reduce the amount of federal grants they are allocated to fund critical services. This in turn will harm all of these Localities' residents, citizens and noncitizens alike. Thus, many of the harms discussed above will flow to the Localities even if the Bureau plans to exclude the Omitted Noncitizens from the census count only for purposes of congressional apportionment.

e. The ACS Is Not a Suitable Alternative for Decennial Census Population Data

The PRIA briefly suggests that those who rely on total population data from the decennial census may be able to obtain such data from the ACS.[103] This is incorrect. The ACS complements, but is not a substitute for, the decennial census. Whereas the decennial census was created to capture the total population of the nation, the ACS provides a snapshot in time. It captures a sample of the U.S. population to measure the changing social, economic, and housing

[102] *See, e.g.*, 8 U.S.C. § 1641 (defining "qualified alien" under the Personal Responsibility and Work Opportunity Reconciliation Act to include refugees, asylees, and noncitizens other than lawful permanent residents).

[103] PRIA, *supra* note 4, at 12.

characteristics of our country's population annually.[104] As the Bureau admits, ACS data depends on accurate decennial census population data because "there are no other comparably accurate, comprehensive, and reliable sources of this information."[105] Indeed, decennial census data feeds into the sampling weights used for the ACS. Thus, far from being a reliable alternative to decennial census population data, the ACS data too will be undermined by the Bureau's proposal.[106]

3. The Bureau Failed to Assess Whether it Can Effectuate its Unlawful Proposal to Exclude the Omitted Noncitizens

Finally, the Bureau proposes to exclude the Omitted Noncitizens from the census count without assessing whether it could practically do so with any reasonable degree of certainty. The Bureau proposes using administrative records or a citizenship question to effectuate its unlawful proposal. Yet, there is considerable evidence that the Bureau will not be able to accurately identify and exclude the Omitted Noncitizens through either method, leading to an error-plagued citizen count. Indeed, the Bureau has previously acknowledged that each approach—using administrative records alone or asking about citizenship on the census questionnaire—would generate errors.[107]

There is significant evidence that the inclusion of a citizenship question is unlikely to produce accurate information on citizenship. First, as discussed above, many families with immigrant members may be chilled from responding to the census if it includes a citizenship question. *See* Part I.C.2.d above. Studies have also shown that a significant number of individuals decline to respond to the citizenship question on the ACS—particularly among individuals who identify as Hispanic.[108] Indeed, the Bureau's *own research papers* suggest that many respondents may misreport their citizenship status out of fear of stating that they are not citizens.[109]

There are also significant deficiencies in the Bureau's ability to use administrative records to identify and exclude the Omitted Noncitizens from the decennial census count. First, hard-to-count groups, including undocumented immigrants, may be absent from administrative records because they have limited contact with the government.[110] Second, even where

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[104] U.S. Census Bureau, American Community Survey, Sample Size Definitions (last revised Aug. 22, 2023), https://www.census.gov/programs-surveys/acs/methodology/sample-size-and-data-quality/sample-size-definitions.html [https://perma.cc/JCY5-53PE].

[105] PRIA, *supra* note 4, at 15.

[106] *Id.* at 12-13.

[107] *Dep't of Commerce*, 588 U.S. at 774.

[108] J. David Brown et al., *Understanding the Quality of Alternative Citizenship Data Sources for the 2020 Census*, U.S. Census Bureau (June 2019), at 6-8, https://www2.census.gov/ces/wp/2018/CES-WP-18-38R.pdf [https://perma.cc/KDK6-9T6K].

[109] *Id.* at 4-5.

[110] Herbert, *Coverage of Historically Undercounted Communities*, *supra* note 77.

administrative records do exist for noncitizens, the Bureau must be able to link those records to a specific household. This generally requires that there be sufficient personally identifying information in both the administrative records and the census responses to establish a link. However, noncitizens may be particularly susceptible to having administrative records that cannot be linked to the Bureau's records. For example, during the 2020 Census, almost 20 percent of individuals identified as noncitizens in administrative records could not be linked to an address in the Bureau's 2020 collection universe—i.e., the list of addresses thought to be potentially inhabitable and from which a census response was sought—compared to just 5.4 percent of individuals identified as citizens.[111]

Finally, even if there is sufficient matching personally identifying information such that administrative records can be linked to a household, there is a significant likelihood that the citizenship information may be missing or incorrect. Census Numident records—which include records from the Social Security Administration ("SSA")[112]—are known to have incomplete and erroneous citizenship data for a significant portion of the U.S. population. The SSA also acknowledges that "SSA records do not provide definitive information about an individual's citizenship status[,]" and states that "approximately 1/4 of those records do not have an indication of citizenship present."[113] The Bureau has identified seven categories of individuals for whom administrative records are unlikely to provide reliable citizenship data—including many naturalized citizens and lawful permanent residents, undocumented immigrants, and anyone whose administrative records do not match their census survey responses.[114] A former Bureau official has warned that if noncitizens fail to respond to the census—and the Bureau then uses flawed administrative records that report people as noncitizens who have since become

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[111] J. David Brown et al., U.S. Census Bureau, Real Time 2020 Administrative Record Census Simulation (May 5, 2023), at ix, https://www2.census.gov/programs-surveys/decennial/2020/program-management/evaluate-docs/EAE-2020-admin-records-experiment.pdf [https://perma.cc/953E-XJV7].

[112] The "Census Numident," or U.S. Census Bureau Numerical Identification file, is "a person-level research file" that, for each person, includes date and place of birth, sex, race/ethnicity, and other "interactions individuals have with SSA related to [social security numbers]," including "applications, claim records, death information, and other interactions." The Census Numident is the file the Census Bureau creates after processing SSA's periodic updates to this information. The Census Bureau then makes anonymized subsets of this data available to researchers. *See generally* Keith Finlay & Katie R. Genadek, U.S. Census Bureau, *Measuring All-Cause Mortality With the Census Numident File*, Am. J. Public Health (Jul. 2011) at S142, https://pmc.ncbi.nlm.nih.gov/articles/PMC8495642/pdf/AJPH.2021.306217.pdf [https://perma.cc/3DLD-US7T]; *see also* CenSoc Project, *Download Data*, https://censoc.berkeley.edu/data [https://perma.cc/3DLD-US7T] (last accessed Nov. 2, 2026).

[113] Letter from Nancy Morales Gonzalez, SSA, to John Sherman, Fair Elections Center (July 13, 2023), at 2-3, https://fairelectionscenter.org/wp-content/uploads/2025/07/SSA-Touhy-Decision-letter.July-13-2023-signed.pdf [https://perma.cc/Y5U9-UTU8].

[114] Brown et al., *Quality of Alternative Citizenship Data Sources*, *supra* note 108, at 18.

citizens—the Bureau may overestimate the noncitizen population relative to the citizen population.[115]

The Bureau's recent publication attempting to identify noncitizen voters[116] only heightens concerns that it will erroneously identify—and thereby exclude—someone as a noncitizen based on inaccurate administrative data. That report has drawn significant criticism, including from former Bureau officials, for methodological flaws in its linkage of commercial voter data with federal records and the likelihood of significant false matches.[117]

Given these challenges, it is unsurprising that the Department of Justice conceded to the Supreme Court that there was no way for the Bureau to effectuate the first Trump Administration's directive to exclude all undocumented residents using administrative records.[118] Yet in attempting to exclude an even broader category of noncitizens from the census count in 2030, the Bureau fails to acknowledge the recent impossibility of such a task or explain what, if anything, has changed such that it could now effectuate this goal.

II. The Bureau's Proposal for Determining Usual Residence

The Criteria also proposes to promulgate a definition of "usual residence" that is deeply problematic and arbitrary.

First, the Bureau asserts that a person's residence "should be consistent with, and evidenced by, their tax records."[119] Yet the Bureau fails to acknowledge that many Americans do not file tax returns, including, for example, senior citizens who rely on Social Security benefits and students. Approximately 10 percent of households in Minnesota do not file income tax returns,[120] and Hennepin County estimates that at least 52,000 households in the county will be impacted if the Bureau determines usual residence based on tax returns. Similarly, one in seven San José residents is 65 or older, and many receive Social Security retirement benefits as their sole income source and fall below the Internal Revenue Service's income threshold. Many

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[115] Jeffrey Mervis, Can the Census Bureau actually meet Trump's demand to identify noncitizens? Science.org (Jul. 28, 2020), https://www.science.org/content/article/can-census-bureau-actually-meet-trump-s-demand-count-noncitizens.

[116] U.S. Census Bureau, Noncitizen Voting in the 2020 Election, a Beginning Analysis (Aug. 18, 2026), https://www.census.gov/content/dam/Census/library/publications/2026/dir/noncitizen-voting-in-the-2020-election.pdf [https://perma.cc/8M2U-VWWR].

[117] Amy O'Hara, *Dissecting the "Beginning Analysis" of Noncitizen Voting*, Georgetown University Massive Data Institute (Aug. 2026), https://mdi.georgetown.edu/response-to-voter-record-analysis [https://perma.cc/LN8V-VXW8].

[118] Tr. of Oral Argument at 20, *Trump v. New York*, 592 U.S. 125 (2020) (No. 20-366), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2020/20-366_7lho.pdf [https://perma.cc/84HW-NN88].

[119] Criteria, 91 Fed. Reg. at 57529.

[120] Eric Willette, 2026 Minnesota Tax Incidence Study, Minnesota Dep't of Revenue (Mar. 23, 2026), https://www.revenue.state.mn.us/tax-incidence-studies.

Localities are also home to universities with significant student populations. To the extent students are claimed as dependents on their parents' tax returns, it is unclear whether the Bureau would count these individuals based on their parents' residence. The Criteria does not grapple with these considerations—despite the significant impact they would have on the Bureau's ability to count everyone in the right place.

Second, the Criteria would dramatically alter the "usual residence" standard by creating a "census enumeration period." The usual residence standard is used to "determine the number of people in each state"[121] and has traditionally been understood to mean "the place where a person lives and sleeps most of the time."[122] The Bureau now seeks to redefine "usual residence" as "the residence at which [a person has] lawfully spent the greatest number of days during the census enumeration period,"[123] with this period running from "January 3 to April 1 during decennial census years."[124] This arbitrary period is a transparent effort to skew apportionment particularly by allocating those persons who live in colder climates, like New York, to warmer areas, such as Florida, where they spend substantial portions of winter (i.e., January through April), depriving the states in which these persons *usually* reside of fair and equal representation.

Since the first census was conducted in 1790, the Bureau has used the "usual residence" standard to allocate persons to their home states.[125] The standard encompasses "some element of allegiance or enduring tie to a place."[126] The Bureau sets rules for establishing usual residence that govern each census. For example, in the 2010 and 2020 censuses, the Bureau determined that "[p]eople who live or stay at two or more residences (during the week, month, or year), such as people who travel seasonally between residences (for example, snowbirds)," should be counted at the residence where they live and sleep most of the time.[127] If time is equally divided between residences, or if usual residence cannot be determined, then the persons should be counted where they are staying on April 1 of the census year.[128] In 2010, Census Director Robert Groves explained that this rule was designed to address the double counting of persons with a

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[121] Criteria, 91 Fed. Reg. at 57529; *Franklin*, 505 U.S. at 804 ("'Usual residence' was the gloss given the constitutional phrase 'in each State' by the first enumeration Act and has been used by the Census Bureau ever since to allocate persons to their home States.").

[122] *E.g.*, U.S. Census Bureau, Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5526 (Feb. 8, 2018) [hereinafter "2020 Residence Criteria"].

[123] Criteria, 91 Fed. Reg. at 57526.

[124] *Id.*

[125] *Franklin*, 505 U.S. at 804.

[126] *Id.*

[127] *See* 2020 Residence Criteria, *supra* note 122.

[128] *Id.*, 83 Fed. Reg. at 5533 (establishing this rule for snowbirds and others who live or stay at two or more residences).

first home in a northern state who migrate to a home in a southern state for the winter.[129] As an example, the Census Director noted that a person who spends eight months of the year in Michigan and four months of the year in Florida should complete the census form at the Michigan address.[130] Notably, even prior to 2010, the Bureau identified snowbirds in its residence rules and determined that the relevant period for determining their usual residence was a year.[131]

The Bureau's proposal to incorporate a "census enumeration period" disregards this decades-long position for determining usual residence of persons with two or more residences, stating in a conclusory manner that the period covering January 3 to April 1would be "sufficient and appropriate for purposes of making a holistic determination about a person's "usual residence" as of April 1.[132] The Bureau further states that the defined enumeration period is clearer and "preferable to leaving the issue open-ended and uncertain."[133] But the Bureau provides no evidence that the status-quo was ever considered open-ended or uncertain. The Bureau also provides no explanation as to how or why the circumscribed enumeration period is preferable or how a person's residence during this period better reflects his or her allegiance to a place. Nor does it provide any acknowledgment of, let alone any reason for, this substantial change in position.

The absence of any reasoning reflects the Bureau's failure to consider the substantial harms that may arise from its proposed enumeration period. In New York City, for example, the census enumeration period would remove a substantial number of New Yorkers from the City's count since many of them spend a portion of the winter elsewhere, either vacationing or working remotely. It is estimated that at least 100,000 City residents spend much of the winter in warmer locations (i.e., "snowbirds").[134] Under the Criteria, these New Yorkers, despite paying taxes, voting, and living in the City, would not be counted as part of their home state. These snowbird residents also skew heavily toward age 55 and up and are likely concentrated in particular neighborhoods and demographic groups, meaning their omission would distort New York City's age structure as well as its total population.

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[129] Robert Groves, How Two Homes Breed Duplicate Counts (Jan. 19, 2010), https://www.census.gov/newsroom/blogs/director/2010/01/how-two-homes-breed-duplicate-counts.html [https://perma.cc/4SGF-QF4Y].

[130] *Id.*

[131] U.S. Census Bureau, Residence Rules: Facts About Census 2000 Residence Rules § 6, https://www2.census.gov/programs-surveys/decennial/2000/program-management/1-plan/address-list-development/resid_rules.pdf [https://perma.cc/X5M6-2BB5]; U.S. Census Bureau, 1990 Census of Population and Housing: History at 1C-1 ¶ 13, at 721, https://www2.census.gov/prod2/cen1990/cph-r/cph-r-2.pdf (last accessed Nov. 2, 2026).

[132] Criteria, 91 Fed. Reg. at 57526.

[133] *Id.*

[134] Stanley K. Smith & Mark House, *Snowbirds, Sunbirds, and Stayers: Seasonal Migration of Elderly Adults in Florida*, 61 J. Gerontology: Series B S232 (2006), https://doi.org/10.1093/geronb/61.5.S232.

Other groups would be negatively impacted by the new enumeration period as well, including but not limited to remote workers, traveling nurses, students, and some immigrant families. Just like snowbirds, remote workers who spend the winter elsewhere would be allocated in those places instead of the city they actually live in and consider home. Again, in New York City, the exclusion of these workers would be particularly impactful, given that remote work among City resident workers surged from 5 percent in 2019 to 24 percent in 2021,[135] and since 2024, is still well-above pre-pandemic levels at 13 percent.[136] Additionally, students studying abroad[137] (e.g., New York University sent 4,800 students abroad between 2017 and 2018[138]), patients receiving care out of state, and workers on temporary out-of-state assignments would not be accurately counted. Finally, many immigrant families take extended trips to origin countries around winter holidays[139] and would be excluded.

By imposing this arbitrary timeframe, the Criteria once more risks distorting the census by unlawfully depriving states of fair representation and census-derived federal resources. Further, the consequences of undercounts and an inaccurate enumeration can have profound ripple effects at the local, state, and federal levels, as discussed in Part I.C.2 above. The Bureau should not proceed with the Criteria's proposed enumeration period and revert to prior, longstanding practice.

III. The Bureau's Proposal to Remove Demographic Questions from the Decennial Census

The Bureau also proposes to eliminate critical demographic questions from the decennial census questionnaire.[140] This proposal to prohibit the inclusion of demographic questions is

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[135] N.Y.C. Dep't of City Planning, Population Division, Highlights for New York City from the 2022 American Community Survey 10 (Jan. 2024), https://s-media.nyc.gov/agencies/dcp/assets/files/pdf/data-tools/census/acs/dcp-nyc-highlights-from-the-2022-acs.pdf [https://perma.cc/S2V7-D234].

[136] U.S. Census Bureau, Table DP03: Selected Economic Characteristics (American Community Survey, 2024 ACS 1-Year Estimates Data Profiles), for New York City, https://data.census.gov/table?q=DP03&g=160XX00US3651000 (last accessed Nov. 2, 2026).

[137] Elizabeth Redden, *Study Abroad Numbers Grow*, Inside Higher Ed (Nov. 12, 2018), https://www.insidehighered.com/news/2018/11/13/study-abroad-numbers-continue-grow-driven-continued-growth-short-term-programs [https://perma.cc/L6KJ-SEQY].

[138] Martha J. Bekink, *NYU Top US University for Both International Students and Study Abroad 5 Years in a Row*, Global Dimensions (NYU blog) (Dec. 5, 2019), https://wp.nyu.edu/global_dimensions/2019/12/05/nyu-top-us-university-for-both-international-students-and-study-abroad-5-years-in-a-row [https://perma.cc/QJY8-HUL5].

[139] The Changing Face of Home: The Transnational Lives of the Second Generation 96 (Peggy Levitt & Mary C. Waters eds., 2002).

[140] This erasure is not without context: "Federal data has been disappearing under Trump." Mitchell Hartman, Federal data has been disappearing under Trump, Marketplace (July 28, 2025), https://www.marketplace.org/story/2025/07/28/federal-data-has-been-disappearing-under-trump (describing how the federal government is carrying out a "targeted, surgical removal of data sets, or elements of data sets, that are not aligned with the administration's priorities," leading to the widescale elimination of data on race,

inadequately reasoned and risks impeding local governments' ability to nimbly identify and address real-world problems.

First, the Bureau proposes to eliminate questions on race and ethnicity, which have been a longstanding part of the decennial census. Information about race has been collected continuously since the very first decennial census in 1790, including the self-response questionnaires used for enumeration since 1960.[141] The collection of ethnicity data through the decennial census also has a long history, with information about ethnicity being collected as far back as 1850, and questions about Latino/Hispanic origin being included since 1970.[142] Today, the census is the only source of complete, block-level data on the race and ethnicity of people in the United States.[143] Now, in an abrupt and under-considered change of course, the Bureau proposes to prohibit these demographic questions—purportedly based on concerns about sensitivity, privacy, and accuracy that are not explained and have never previously justified precluding the collection of race and ethnicity data in the history of the census.

Second, the Bureau proposes to prohibit questions on "sexual orientation." As with much of the misguided and unlawful Criteria, the Bureau's proposal with respect to sexual orientation is so vague and ambiguous that it undermines the Localities' (and the public's) ability to offer meaningful comment. It is not clear whether the Bureau intends to prohibit the inclusion of a standalone sexual orientation question in the decennial census, or whether it additionally plans to wipe any existing reference to same-sex couples from the census questionnaire.

As for the Bureau's proposal to permit questions about "biological sex," the census has historically asked about sex but has not asked about gender identity as a distinct concept. It is difficult to parse the Bureau's cursory discussion, but the Criteria could be read to preemptively prohibit questions about gender identity from the 2030 and subsequent censuses. Regardless of whether the Bureau proposes to prohibit new questions about sexual orientation and gender identity ("SOGI")—or to modify questions from the 2020 Census—the Criteria is unsupported,

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ethnicity, sexual orientation, and gender identity); *see* Lauren Bouton & Elana Redfield, UCLA School of Law Williams Institute, Removal of Sexual Orientation and Gender Identity from Federal Data Collections (Feb. 2026) at 2, https://williamsinstitute.law.ucla.edu/wp-content/uploads/Federal-SOGI-Data-Collection-Feb-2026.pdf [https://perma.cc/3FBM-ZZCC] (identifying the removal of at least one sexual orientation and gender identity measure from approximately 360 different federal data collections).

[141] Beverly Pratt et al., *supra* note 2.

[142] *See* National Research Council, Modernizing the U.S. Census, *supra* note 99, at 154 n.2 ("1850 is the census date usually cited by both historians and social scientists for the beginning of ethnic items in the census."); *see also id*. at 144 (noting that "Chinese" category was added for 1870 decennial census); Ziyao Tian et al., Pew Research Center, Counting Race: How the Census Measures Identity and What Americans Think About It (Nov. 3, 2025), https://www.pewresearch.org/race-and-ethnicity/2025/11/03/counting-race-how-the-census-measures-identity-and-what-americans-think-about-it [https://perma.cc/H998-A27M].

[143] Drishti Pillai & Samantha Artiga, Proposed Changes to Demographic Data Collection in the Census Could Impact Efforts to Address Health and Health Care Disparities, KFF (Sept. 25, 2026), https://www.kff.org/racial-equity-and-health-policy/proposed-changes-to-demographic-data-collection-in-the-census-could-impact-efforts-to-address-health-and-health-care-disparities [https://perma.cc/7YK5-9PW5].

drawn from largely conclusory assertions, and fails to consider the benefits of such data. The Bureau's decision to prohibit SOGI questions is especially perplexing given recent calls, ranging from federal agencies to research institutions, to enhance, not eliminate, SOGI data collection in the census.[144]

Fundamentally, the Criteria reveals that the Bureau is abandoning its longstanding and essential function of collecting objective, reliable, and apolitical data for use in a wide range of research and governmental purposes, and is instead positioning the census to advance a political agenda.[145] Indeed, the Criteria candidly admits that its approach to the demographic questions is intended to bring about a "colorblind" approach to policymaking, and to advantage one side in the "national discourse" and purported "shifts in the law" regarding "race, ethnicity, and sexual orientation."[146] In doing so, the Bureau confuses the legal and political uses of these demographic categories with their basic *existence*. Regardless of the lawfulness of specific race-based legislative and educational choices[147] or the Administration's political preferences, there is

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[144] The White House, *Recommendations on the Best Practices for the Collection of Sexual Orientation and Gender Identity Data on Federal Statistics*, https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/01/SOGI-Best-Practices.pdf [https://perma.cc/3JMX-6R8S]; Subcommittee on Equitable Data-Subcommittee on Sexual Orientation, Gender Identity, and Variations in Sex Characteristics (SOGI) Data of the National Science and Technology Council, Federal Evidence Agenda on LGBTQI+ Equity (Jan. 2023), https://bidenwhitehouse.archives.gov/wp-content/uploads/2023/01/Federal-Evidence-Agenda-on-LGBTQI-Equity.pdf [https://perma.cc/EC24-PWG3]; Irene Tamí-Maury and Mary-Louise E. Millett, *Recommendations and Implementation Considerations for the Routine Collection of Sexual Orientation and Gender Identity Data in Research and Practice*, 114 Am. J. Public Health 777, https://pmc.ncbi.nlm.nih.gov/articles/PMC11224639 [https://perma.cc/DZ89-NYN7]; *see also* National Academies of Sciences, Engineering, and Medicine, *Sex and Gender Identification and Implications for Disability Evaluation: Study Approach* (Hortensia de los Angeles Amaro et al. eds., 2024), https://www.ncbi.nlm.nih.gov/books/NBK610257/#pz26-4 [https://perma.cc/RCG6-9TMC].

[145] The Criteria advances in profoundly harmful ways this Administration's willful blindness to the scientific, political, historical, and social complexity of sex, gender, race, and ethnicity, and its attacks on lawful policies that aim to help vulnerable populations. *See, e.g.*, Exec. Order No. 14398, § 1, 91 Fed. Reg. 16147 (Mar. 26, 2026) (mischaracterizing "diversity, equity, and inclusion" activities as segregating persons based on race or ethnicity "rather than treat[ing them] equally and objectively based on their merit," and claiming "significant progress in ending racial discrimination in American society, including so-called [DEI] activities"); *see also* Exec. Order No. 14281, § 1, 90 Fed. Reg. 14281 (Apr. 23, 2025) (criticizing efforts to achieve equity as "a pernicious movement [that] endangers this foundational principle" and encourages "a divisive pursuit of results preordained by irrelevant immutable characteristics"); Exec. Order No. 14187, §§ 2, 3, 90 Fed. Reg. 8771 (Jan. 28, 2025) (characterizing gender-affirming care as "chemical and surgical mutilation" and rejecting its scientific basis as "junk science"); Exec. Order No. 14168, §§ 1, 2, 90 Fed. Reg. 8615 (Jan. 20, 2025) (criticizing "ideologues who deny the biological reality of sex" and asserting a "policy . . . to recognize two sexes, male and female, [that] are not changeable and are grounded in fundamental and incontrovertible reality.").

[146] Criteria, 91 Fed. Reg. at 57524, 57527.

[147] *Compare Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 213–14 (2023) [hereinafter *SFFA*] (asserting that expiration date has passed on race-based college admission policies) *with id.* at 385 (Jackson, J., dissenting) (describing how, given the "[g]ulf-sized race-based gaps [that] exist with respect to the health, wealth, and well-being of American citizens," the idea of a colorblind constitution

simply no dispute that people in this country have and will continue to have races, ethnicities, and sexual orientations—even if the Bureau closes the census's eyes to them.[148] In the meantime, the Criteria would destroy the premier source of objective primary-source data about these categories and thereby impoverish policymaking at every level of government as well as research and insight across uncountable disciplines.[149] In all of these domains, users rely heavily on demographic data to carry out a host of lawful activities and inquiries. Nothing about the Criteria's conclusory and unsubstantiated handwaving about sensitivity, response rates, and privacy acknowledges or grapples with the enormity of its proposed change or the fact that collecting demographic data matters immensely.

A. Localities Rely on Decennial Census Race and Ethnicity Data

The Localities, and other local jurisdictions, have long relied on race and ethnicity data from the census to protect public health, safety, and welfare and to effectively implement federally mandated requirements under various social safety net programs. The Criteria fails to grapple with these critical uses of demographic data.

"blinks both history and reality in ways too numerous to count"—not to mention that recent shifts in the law toward colorblind constitutionalism have no "basis in law, history, logic, or justice" and "stunt[]" progress to undo those inequities); *see Louisiana v. Callais*, 146 S. Ct. 1131, 1157–58 (2026) (claiming that "vast social change has occurred throughout the country and particularly in the South," and that such change justifies changed interpretation of Voting Rights Act).

[148] In this regard, the Criteria's approach contravenes the Bureau's responsibility to "produce and disseminate relevant and timely statistical information" and "conduct credible and accurate statistical activities." 44 U.S.C. § 3563; *see* U.S. Census Bureau, Statistical Quality Standards (Sep. 29, 2026), https://www2.census.gov/about/policies/quality/quality-standards.pdf [https://perma.cc/W5NQ-7LHS]; U.S. Census Bureau, Information Quality Guidelines (last revised Nov. 18, 2021), https://www.census.gov/about/policies/quality/guidelines.html [https://perma.cc/HCU4-9Y9L].

[149] *See, e.g.*, Elizabeth Lukanen & Emily Zylla, State Health and Value Strategies, Proposed Census Data Changes: Downstream Impacts and Opportunities for State Comment (Oct. 6, 2026), https://shvs.org/resources/proposed-census-data-changes-downstream-impacts-and-opportunities-for-state-comment [https://perma.cc/UX5Q-MR9B] ("Eliminating race and ethnicity questions from the decennial census and formally prohibiting sexual orientation questions (not currently collected) on the census questionnaire would reduce the future demographic information available from a full population count. Although some information may remain available through the ACS and administrative records, states would have less census-based demographic data available for equity analyses, forecasting, resource allocation, and long-term planning."). Indeed, the Bureau's goal appears to be to eliminate collection of this valuable demographic data across a wide range—and perhaps all—of the Bureau's various surveys and data collections. *See, e.g.*, U.S. Census Bureau, Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Annual Business Survey, 91 Fed. Reg. 66669 (Oct. 22, 2026) (proposing to remove owner demographic questions about race and ethnicity, among others, from Annual Business Survey).

1. Local Government Services and Planning

Cities and counties are the backbone of their public health and public safety systems.[150] To carry out their role equitably, local governments rely upon demographic census data to ensure that all residents are served evenly.

The Localities' provision of public health services highlights the need for accurate demographic census data. Local public health agencies provide a wide range of health services, such as immunizations and screenings for and treatment of infectious diseases.[151] And they serve vulnerable patients, including groups at higher risk for poor health outcomes, such as racial and ethnic minorities. Traditionally, race and ethnicity data has been collected for public health purposes to describe vital and health statistics, as a risk indicator for health outcomes, and to improve the delivery of health services, among other purposes.[152]

San Francisco's Public Health Department (SFDPH), for example, uses census data to calculate rates of disease or health conditions. To do this work, SFDPH relies on demographic data from the census to identify disparities present among different populations in rates of substance use, STIs, diabetes, and several other diseases, and target its limited resources to effectively address those issues.[153] New York City's Department of Health and Mental Hygiene (NYC-DHMH) similarly calculates rates of disease, and fatal overdoses, across racial and ethnic groups to inform its public health responses. Seattle has a similar practice, especially in its management of communicable diseases. During the COVID-19 pandemic, for instance, its public health department, Public Health-Seattle and King County, relied on census demographic data to determine rates of COVID-19 transmission by race and ethnicity to ensure an equitable response to the pandemic.

Demographic data also plays a central role in ensuring that these services *actually reach* all residents, especially racial and ethnic minorities who are historically underserved. To that end, San Francisco's Human Services Agency looks to demographic data to understand whether there are barriers and disparities in access to the department's services.[154] San Mateo County

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[150] Public Health Law Center, *State & Local Public Health: An Overview of Regulatory Authority*, https://www.publichealthlawcenter.org/resources/state-local-public-health-overview-regulatory-authority [https://perma.cc/MSS3-U35N].

[151] *See* Vi D. Le & Melanie Klein, Federation of American Scientists, The Public Health Cost of Eliminating Race and Ethnicity Data (Sept. 4, 2026), https://fas.org/publication/public-health-cost-eliminating-race-data [https://perma.cc/4ULA-URRG] ("Imagine trying to solve a public health crisis without knowing which communities are being hit hardest."); *see also* Eileen Salinsky, *Governmental Public Health: An Overview of State and Local Public Health Agencies*, The George Washington University, No. 77 (Aug. 18, 2010), at 15-16, https://hsrc.himmelfarb.gwu.edu/cgi/viewcontent.cgi?article=1237&context=sphhs_centers_nhpf.

[152] Vickie M. Mays et al., Classification of Race and Ethnicity: Implications for Public Health, Annual Rev. Public Health 83-110 (2003), https://pmc.ncbi.nlm.nih.gov/articles/PMC3681827/pdf/nihms-314166.pdf.

[153] San Francisco Community Health Assessment, 2024 *supra* note 97, at 32-37, 43.

[154] San Francisco – Human Services Agency, Vulnerable Population Data Book: Methodology 3 (2020), https://www.sfhsa.org/sites/default/files/media/document/migrated/Report_Data%20Book%20Methodology_0

depends on demographic data to develop public health outreach programs that are culturally responsive and linguistically varied, thereby connecting a more diverse set of clients to health and social services.

Demographic data also serves a critical public safety and emergency response function. San José, for example, relies on the census's race and ethnicity data to translate public service announcements—such as boil-water notices, evacuation orders, and fire or police contact information—into languages that are spoken by 5 percent or more of residents. This translation effort is indispensable, especially in a jurisdiction where more than half of residents speak a language other than English at home.[155] Through its City Manager's Office of Emergency Management, San José also uses census data to estimate the number of people with disabilities, across racial and ethnic groups, to ensure that emergency responses—including available shelters, evacuation routes, and emergency public service announcements—serve and are accessible to all communities.

Finally, local governments depend on census data for long-term equity planning across areas, ranging from public health and public safety to housing and transit. San José, for example, depends on demographic data for its Children and Youth Services Master Plan, which commits that no young person's race or ethnicity should limit their opportunities.[156] Keeping this promise starts with counting children, of all races and ethnicities, accurately. Seattle similarly relies on demographic data to measure and ensure equity in its programs. Seattle's Department of Transportation (SDOT) uses a Race and Social Equity Index (RSE Index), which incorporates census data to identify historically underserved communities, that helps inform where the City invests future efforts. Likewise, race and ethnicity census data allows Seattle's Office of Housing to understand how affordable housing funds should be allocated to ensure equitable outcomes.

Without the ability to leverage the census's demographic data in these various ways, the Localities and other jurisdictions would be stifled in their efforts to understand and equitably respond to constituent needs.

2. Local Government Obligations Under Federal Statutes and Regulations

A slew of federal statutes and regulations, across policy areas, require grantees and other regulated entities, including the Localities, to consider race and ethnicity data in planning and operational decisions.

71420.pdf [https://perma.cc/A55K-BZB3] (noting reliance on census tract data to develop data report regarding low-income adults in San Francisco).

[155] U.S. Census Bureau, Table S1601: Language Spoken at Home (American Community Survey, ACS 5-Year Estimates Subject Tables) for the City of San José, available at https://data.census.gov/table?q=language&g=160XX00US0668000 (last accessed Nov. 2, 2026).

[156] City of San José, Children and Youth Services Master Plan 2024-2027, https://www.sanjoseca.gov/home/showpublisheddocument/126690/638991649877470000 (last accessed Nov. 2, 2026).

For instance, the federal Ryan White HIV/AIDS Program, under which local governments may receive grants to treat persons with HIV or AIDS, requires grantees to consider disparate impacts and racial identity. Specifically, Congress requires each local government grantee to establish a council that "reflect[s] in its composition the demographics" of the local population with HIV/AIDS "with particular consideration given to disproportionately affected and historically underserved groups and subpopulations."[157]

Many other federal requirements are similar. For example, the U.S. Department of Housing and Urban Development (HUD) requires that various locality grantees submit a consolidated plan that assesses "the nature and extent of homelessness by racial and ethnic group."[158] Similarly, the U.S. Department of Transportation's Title VI regulations require local transportation systems that receive federal funding to maintain "racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance."[159] And the Federal Transit Administration (FTA) mandates that local transportation systems incorporate race and ethnicity data (including from the decennial census) as part of the required Title VI Program that is submitted to the FTA every three years to demonstrate compliance with Title VI and the applicable regulations.[160] These examples

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[157] 42 U.S.C. § 300ff-12(b)(1); *see generally* 42 U.S.C. §§ 300ff-1 to -140. The Ryan White HIV/AIDS Program includes the Minority AIDS Initiative (MAI), which provides additional funding for "racial and ethnic minority populations disproportionately affected by HIV." *See* Health Resources & Servs. Admin., Ryan White HIV/AIDS Program, Part F: Minority AIDS Initiative (last reviewed Feb. 2022), https://ryanwhite.hrsa.gov/about/parts-and-initiatives/part-f-minority-aids-initiative [https://perma.cc/5ATD-49CK].

[158] *See* 24 C.F.R. § 91.205(c)(1)(ii). This consolidated plan requirement applies to various grant programs administered by HUD's Office of Community Planning and Development (CPD), including the HOME Investment Partnerships Program (HOME), *id.* § 92.104; the Community Development Block Grant (CDBG), *id.* § 570.302; Housing Opportunities for Persons with AIDS program (HOPWA), *id.* § 574.110; Continuum of Care (CoC) program, *id.* § 578.27; and other CPD-funded initiatives. Moreover, these CPD programs impose additional requirements that render grant recipients dependent on racial and ethnic census data. For instance, in authorizing HUD's HOME and HOPWA programs, Congress acted to "improve housing opportunities for all residents of the United States, particularly members of disadvantaged minorities, on a nondiscriminatory basis." 42 U.S.C. § 12702(3). Additionally, HUD's HOME program, authorized by the Cranston-Gonzalez National Affordable Housing Act of 1990, requires recipients "to establish and oversee a minority outreach program . . . to ensure the inclusion, to the maximum extent possible, of minorities . . . , and entities owned by minorities . . . in all contracts[] entered into by the participating jurisdiction." *Id.* § 12831(a). And Congress also requires that CDBG program funds be allocated to provide "assistance to . . . minority students." *Id.* § 5307(c). The HOME program mandates that participating jurisdictions maintain records on the extent to which racial and ethnic groups have participated in activity funded by HOME funds. 24 C.F.R. § 92.508(7).

[159] 49 C.F.R. § 21.9(b). Notably, even when the DOT removed disparate-impact liability from its Title VI regulations, it noted expressly that it was *retaining* this requirement to maintain racial and ethnic data. Department of Transportation, Rescinding Portions of Department of Transportation's Title VI Regulations To Conform More Closely With the Statutory Text and To Implement Executive Order 14281, 91 Fed. Reg. 35424, 354327 (June 11, 2026).

[160] *See* FTA Circular C 4702.1B (Oct. 1, 2012).

illustrate that the Localities' ability to meet federal statutory and regulatory requirements hinges on the availability of census demographic data.

And even where specific actions are not required, there are boundless instances in which the federal government assumes the continued availability of detailed race and ethnicity data. For example, the Digital Equity Act of 2021 directed the Federal Communications Commission to act affirmatively to prohibit discrimination in the deployment of broadband internet "based on . . . the predominant race or ethnicity composition of an area" and to develop model policies for states and localities to prevent internet service providers from discriminating on this basis.[161] Similarly, the Comprehensive Coordinated Early Intervening Services (CCEIS) framework under the Individuals with Disabilities Education Act requires race- and ethnicity-based proportionality analysis and remedies from local education agencies.[162]

Census demographic data is the most authoritative and accurate source of race and ethnicity data that local governments and other entities rely upon to meet these and other regulatory and statutory requirements.

B. The Bureau's Proposal to Exclude Demographic Questions from the Decennial Census is Arbitrary and Capricious

1. The Bureau Does Not Provide a Reasoned Explanation for Excluding Demographic Questions

The Bureau justifies its decision to omit demographic questions on race, ethnicity, and SOGI on four grounds: (1) a lack of need for the data; (2) possible impacts on self-response rates; (3) concerns about respondent privacy; and (4) the "potentially" sensitive nature of the questions. As discussed below, these assertions are cursory, lack support, and are inconsistent with the available evidence.

a. The Bureau Asserts Without Support that There Is a Reduced Need or Usefulness for Demographic Data

The Bureau baldly asserts, but never substantiates, its surmise that there is a "reduced need for or usefulness" of demographic data.[163]

As discussed in depth in Part III.A above, census race and ethnicity data is essential for various public health and safety functions and is a central component of local compliance with many federal statutes and regulations, which depend on this data or assume its continued existence. The Criteria offers no evidence, nor could it, that this public welfare or statutory dependence on demographic data has diminished in any way. The Bureau has not considered the strong reliance interests in accurate census race and ethnicity data, or how the proposed elimination of decennial race and ethnicity data contravenes the assumption and recognition

[161] 47 U.S.C. § 1754(c)(2).

[162] 34 C.F.R. § 300.646.

[163] Criteria, 91 Fed. Reg. at 57527.

Congress has repeatedly made across innumerable areas that the census will continue to generate data about race and ethnicity.

The Criteria similarly does not explain its assertion that SOGI data is useless. Some localities may collect SOGI data about individuals accessing specific programs, but the absence of a population-level benchmark restricts their ability to fully utilize this information to identify, understand, and address the needs of LGBTQIA communities.[164] Like other demographic data, SOGI questions can help local public health agencies understand and address the needs of LGBTQIA communities. The LGBTQIA community, for example, "faces numerous health disparities compared to the non-LGBT[QIA] population, such as higher rates of substance use, depressive symptoms, and suicide attempts."[165]

Indeed, contrary to the assertions in the Criteria, the *Bureau itself* has identified the need for demographic data, including race and ethnicity, in four broad, non-exclusive areas: (1) civil rights enforcement; (2) equal opportunity; (3) public and private sector research on population changes; and (4) the administration of certain programs.[166] The Criteria makes no effort to

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[164] For example, the health disparities faced by members of the LGBTQIA community are well documented. In particular, older adults and youth in the LGBTQIA community face significant health disparities. *See, e.g.*, Nik M. Lampe et al., Health Disparities Among Lesbian, Gay Bisexual, Transgender, and Queer Older Adults: A Structural Competency Approach, Int'l J. of Aging and Human Development (Jan. 2024), https://doi.org/10.1177/00914150231171838; *see also* Centers for Disease Control and Prevention, Youth Risk Behavior Survey: Data Summary & Trends Report, 2013-2023 (2024) at 2, https://www.cdc.gov/yrbs/dstr/pdf/YRBS-2023-Data-Summary-Trend-Report.pdf. Collecting data on sexual orientation and gender identity is a necessary first step to help researchers address the issues this community faces. *See, e.g.*, Institute of Medicine, Report Brief: The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding (Mar. 2011) at 1-2, https://nap.nationalacademies.org/resource/13128/LGBT-Health-2011-Report-Brief.pdf [https://perma.cc/854D-VRN9] ("Researchers face a number of challenges in understanding the health needs of LGBT populations, including a lack of data. In order to address this, the committee recommends collecting data on sexual orientation and gender identity in health surveys administered by the U.S. Department of Health and Human Services (HHS) and other relevant federally funded surveys."); *see also generally* Institute of Medicine, The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding (2011), at 6-10, https://www.ncbi.nlm.nih.gov/books/NBK64806/pdf/Bookshelf_NBK64806.pdf (committee recommendations).

[165] Hansi Lo Wang, Census Bureau Caught In Political Mess Over LGBT Data, NPR (July 18, 2017), https://www.npr.org/2017/07/18/536484467/census-bureau-found-no-need-for-lgbt-data-despite-4-agencies-requesting-it; Akiesha Anderson, Williams Institute, The Census Will Officially Count Same-Sex Couples for the First Time Ever – But That's Not Enough (April 2018), https://williamsinstitute.law.ucla.edu/publications/census-ss-couples-opinion [https://perma.cc/AQ22-BQWZ].

[166] U.S. Census Bureau, Why We Ask Questions About Race, https://www.census.gov/acs/www/about/why-we-ask-each-question/race [https://perma.cc/2P6D-AQV9]; U.S. Census Bureau, Why We Ask Questions About Hispanic or Latino Origin, https://www.census.gov/acs/www/about/why-we-ask-each-question/ethnicity [https://perma.cc/JMN5-2YL5]; U.S. Census Bureau, Why We Ask Questions About Ancestry, https://www.census.gov/acs/www/about/why-we-ask-each-question/ancestry/ [https://perma.cc/FZ4D-KD4B] (all last accessed Nov. 2, 2026).

consider the obvious question of how these areas of American life can function if questions about race and other demographic data are eliminated from the decennial census.

With respect to civil rights, the Bureau has stated that the federal government depends on race and ethnicity data to monitor compliance with antidiscrimination laws, and to enforce laws, regulations, and policies against discrimination in society, including in the realms of education (i.e. monitoring desegregation), private and public sector employment, and federal financial assistance, among other examples.[167]

Relatedly, the Department of Justice (DOJ), and other federal agencies, have articulated a civil rights need for SOGI data.[168] The DOJ previously asked the Bureau to consider collecting SOGI data to support its enforcement of statutes like the Violence Against Women Act, which specifically prohibits discrimination on the basis of actual or perceived gender identity or sexual orientation. DOJ also highlighted the important role that such data would have in informing the Department's public education, technical assistance, and outreach efforts.[169] The Bureau's assertion that demographic data is no longer useful for these efforts ignores the vast array of circumstances where the federal government needs this data for civil rights enforcement. What is more, this position is unacknowledged and unexplained.

As for equal opportunity, race and ethnicity data is used, among other things, to establish guidelines for "federal affirmative action plans under the Federal Equal Opportunity Recruitment Program; monitor compliance with the Voting Rights Act and enforce bilingual election requirements; monitor and enforce equal employment opportunities under the Civil Rights Act of 1964; identify segments of the population who may not be getting needed medical services under the Public Health Service Act; and allocate funds to school districts for bilingual services under

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[167] U.S. Census Bureau, Ancestry, *supra* note 166; *see, e.g.*, 7 C.F.R. § 272.2(b)(1) (requiring that "no person in the United States shall, on the grounds of sex, including gender identity and sexual orientation, race . . . be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under" the SNAP program).

[168] Aside from the Justice Department, at least three other federal agencies—including the Department of Housing and Urban Development, the Centers for Medicare and Medicaid Services and the Environmental Protection Agency—also asked the Census Bureau to add questions about sexual orientation and gender identity to their data collection practices. Hansi Lo Wang, Census Bureau Caught In Political Mess Over LGBT Data, *supra* note 165.

[169] Letter from Kristen Clarke, Assistant Attorney General, Civil Rights Division, to Albert E. Fontenot, Jr., Associate Director of Decennial Census Programs, and Victoria Velkoff, Associate Director and Chief Demographer (Dec. 9, 2022), https://s3.documentcloud.org/documents/23891611/dec-9-2022-letter-from-doj-to-census-bureau-requesting-sexual-orientation-and-gender-identity-questions-on-the-american-community-survey.pdf [https://perma.cc/B3E8-WVMM]. The Bureau has itself stated that "[f]ederal agencies have expressed interest in and identified legal uses" for sexual orientation and gender identity data, "including civil rights and equal employment enforcement." U.S. Census Bureau, American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test, 88 Fed. Reg. 64404, 64405 (Sept. 19, 2023).

the Bilingual Education Act."[170] Yet again, there is no evidence that these uses for demographic data have been extinguished, and the Criteria makes no attempt to identify any.

Moreover, the Bureau recognizes that researchers, advocacy groups, and policymakers depend on demographic data from the decennial census to evaluate and respond to population changes and to ensure access to opportunities in education, employment, voting, and home ownership.[171] Notably, the Bureau provides a thorough explanation on its current webpage of why these questions serve critical purposes,[172] and provides no basis in the Criteria for its newfound belief that those questions no longer serve those purposes. Consistent with the Bureau's prior position, however, academic and research institutions have long recognized that census data is "our nation's common denominator"; the census "constitutes [] one of the most important sources of U.S. data for basic and applied social research" and is "indispensable for a wide range of research questions."[173] Notably, "for many purposes [the decennial census] is the only large-scale source of data for minority groups."[174]

Relatedly, the Bureau offers no substantive rationale or basis for its assertion that SOGI data is irrelevant to researchers and policymakers. On the contrary, these groups have called on the Bureau to provide more refined SOGI data—not less. A mere few years ago, the Bureau itself described how census responses from the LGBTQIA community, "a historically undercounted community . . . provide[s] reliable data to inform advocates, policymakers, and researchers working" on issues that disproportionately impact that community.[175] Without substantive SOGI data collection at the federal level, researchers and policymakers—like the Localities—are left with "unanswered questions" about LGBTQIA "people's employment, housing and family circumstances; their health and well-being; and the discrimination and disparities they face."[176]

With respect to the final area identified by the Bureau, demographic data is pivotal for the administration of several government programs, including by allowing communities to know "how many people are eligible to participate" and thus to "ensure that programs are operating as

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[170] National Research Council, Modernizing the U.S. Census, *supra* note 99, at 140.

[171] U.S. Census Bureau, Hispanic or Latino Origin, *supra* note 166.

[172] *Supra* note 166 and accompanying text; *see also* U.S. Census Bureau, 2020 Census: LGBTQ+ (Feb. 27, 2020), https://www.census.gov/newsroom/press-kits/2020/2020-census-lgbtq.html [https://perma.cc/G4DR-ZGRL].

[173] Le & Klein, The Public Health Cost of Eliminating Race and Ethnicity Data, *supra* note 151; National Research Council, Modernizing the U.S. Census, *supra* note 99, at 259-260; *see* Elizabeth Arias et al., Data impacts of changes in U.S. Census Bureau procedures for race and ethnicity data, SSM – Population Health (Jan. 2025), https://pmc.ncbi.nlm.nih.gov/articles/PMC11783112/pdf/main.pdf.

[174] National Research Council, Modernizing the U.S. Census, *supra* note 99, at 259.

[175] U.S. Census Bureau, 2020 Census: LGBTQ+, *supra* note 172; Anderson, The Census Will Officially Count Same-Sex Couples for the First Time Ever – But That's Not Enough, *supra* note 165.

[176] Anderson, The Census Will Officially Count Same-Sex Couples for the First Time Ever – But That's Not Enough, *supra* note 165.

intended."[177] For example, census data on race is the basis for accurate estimates of American Indians and Alaska Natives, which are pivotal to the effective administration of "Indian Housing Block Grant program, Indian Community Development Block Grant program, and Indian Health Service."[178]

The Bureau does not explain how, for the first time, it has reached the unsupported conclusion that demographic data is no longer useful—or, as the Criteria states, "immaterial"—for civil rights enforcement, equal opportunity, research on population changes, and the administration of certain government programs.[179] Nor does the Bureau grapple with the significant harm that will flow from the absence of demographic data in these areas.

b. The Bureau Asserts Without Support that Demographic Questions Impact Response Rates

Resting on the generic principle that shorter is better, the Bureau asserts that demographic questions should be eliminated to enhance response rates.[180] To support this general statement, the Bureau relies primarily on a source that found a higher rate of response for the short form, rather than long form, 2000 Census.[181] But the Bureau omits that the 2000 short form questionnaire that yielded an increase in response rates *included* questions about race and ethnicity—as did the short forms in 1980 and 1990.[182] What is more, that same source notes that

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[177] U.S. Census Bureau, Race, *supra* note 166.

[178] *Id.*

[179] Even as they further narrow the circumstances in which state action can be *based* on race, the Supreme Court cases the Bureau cites for its insistence on colorblind constitutionalism leave space for the use of *data* about race, indeed, they rely on it to establish the merits of the challengers' positions. *See, e.g.*, *Callais*, 146 S.Ct. at 1160; *see also SFFA*, 600 U.S. at 221–22 & n.7; *id.* at 269–70 & n.8 (Thomas, J., concurring).

[180] Criteria, 91 Fed. Reg. at 57527.

[181] *Id.* at 57527, 57528 n.8 (citing Cong. Rsch. Serv., R41532, The American Community Survey: Development, Implementation, and Issues for Congress (Dec. 19, 2014) at 3 n.11, https://www.congress.gov/crs_external_products/R/PDF/R41532/R41532.20.pdf).

[182] U.S. Census Bureau, Census 2020 Short Form Questionnaire, https://www.census.gov/content/dam/Census/programs-surveys/decennial/technical-documentation/questionnaires/2000_short_form.pdf [https://perma.cc/V7QV-4CP8] (inquiring about race and ethnicity in Question Nos. 7 and 8 for the head of household and Question Nos. 5 and 6 for all other persons) (last accessed Nov. 2, 2026). The Criteria similarly relies on another study finding that the 1990 census response rate was lower than the 1980 response rate, potentially due to the former questionnaire's greater length. Criteria, 91 Fed. Reg. at 57527, 57529 n.8 (citing Don Dillman et al., Mail-back Response Rates for Simplified Decennial Census Questionnaire Designs (1992), http://www.asasrms.org/Proceedings/papers/1992_131.pdf [https://perma.cc/QP9Q-2JET]). Yet race and ethnicity questions were present on both the 1990 and 1980 short-form decennial censuses, which fully undercuts the Bureau's argument for the same reasons. *See* National Research Council, Modernizing the U.S. Census, *supra* note 99, at 192; U.S. Census Bureau, 1990 Census Short Form, https://www.census.gov/content/dam/Census/programs-surveys/decennial/technical-documentation/questionnaires/1990_questionnaire.pdf [https://perma.cc/4ZTC-D3YP] (asking about race and ethnicity in Question Nos. 4 and 7); U.S. Census Bureau, 1980 Census Short Form,

the federal government itself concluded that the "overall effect" of the differential response rates for the 2000 census short and long forms "was small" because only a small subset of households received the long form.[183] As such, the Bureau's own cited source does not at all support the Bureau's view that such demographic questions should be removed from the census questionnaire to enhance response rates.

Tellingly, neither the Criteria nor the accompanying PRIA points to *any* evidence that a question on race and ethnicity has meaningfully affected response rates—despite six decades of decennial censuses that included such a question. Nor does the Bureau point to any evidence that explicitly eliciting information about sexual orientation or gender identity negatively impacts response rates. These omissions are particularly glaring given the Bureau's rigorous testing and the wealth of analytical tools at its disposal to assess the impact of adding particular questions to census surveys.[184] The Bureau is also able to draw from existing census surveys that collect information about sexual orientation,[185] and has decade-long planning and testing efforts that go into executing the decennial census (which are already underway for the 2030 Census).[186]

c. The Bureau Fails to Substantiate Its Claim that Demographic Questions Raise Privacy Concerns

The Criteria also states that "each demographic question that is included on the decennial census increases the likelihood that the data of certain people who do respond will be identifiable in the resulting published data, in violation of their privacy."[187] Again, the Bureau does not explain, nor provide evidence to support, why other questions—including the respondent's first and last name, telephone number, sex, date of birth, or details about cohabitants—can remain on the census without those same, if not worse, privacy concerns. In other words, it is not clear how

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https://www.census.gov/content/dam/Census/programs-surveys/decennial/technical-documentation/questionnaires/1980_short_questionnaire.pdf [https://perma.cc/36HT-KF84] (asking about race and ethnicity in Question Nos. 4 and 7) (all last accessed Nov. 2, 2026).

[183] Cong. Rsch. Serv., R41532, *supra* note 181, at 3 n.11 (quoting U.S. Government Accountability Office, Report No. GAO-08-1012, 2010 Census: Census Bureau Needs Procedures for Estimating the Response Rate and Selecting for Testing Methods to Increase Response Rate (Sept. 2008) at 12-13, https://www.gao.gov/assets/gao-08-1012.pdf).

[184] U.S. Census Bureau, Survey Methods Research (last revised Feb. 6, 2025), https://www.census.gov/topics/research/survey-methods.Research_&_Expertise.html [https://perma.cc/3S3U-PR47].

[185] For example, since 2019, the ACS has allowed respondents to identify their relationship to other household members using "same sex" and "opposite sex" identifiers. U.S. Census Bureau, The Context and Evolution of Data Collection for Same-Sex Married Couple Households (Apr. 2020), https://www.census.gov/content/dam/Census/library/visualizations/2020/demo/The-Context-and-Evolution-of-Data-Collection-for%20Same-Sex-Married-Couple-Households.pdf [https://perma.cc/WB35-CEPQ].

[186] *See generally* U.S. Census Bureau, 2030 Census Research and Testing (last revised Sept. 16, 2025), https://www.census.gov/programs-surveys/decennial-census/decade/2030/planning-management/plan/research-and-testing.html [https://perma.cc/PXG5-9TAS].

[187] Criteria, 91 Fed. Reg. at 57527.

identifying as a particular race or ethnicity, or stating one's sexual orientation, is so threatening to a respondent's privacy, but the divulging of one's first and last name, date of birth, and telephone number do not raise the same alarm bells for the Bureau.

Here too, the Bureau attempts to rely on a source that does not substantiate its position. The Bureau's cited source stands for the general view that greater accuracy and granularity in statistics is accompanied with "higher [] risk" of a "*confidentiality*-violating disclosure."[188] But, if anything, this study *supports* the continued collection of demographic data, including race and ethnicity. It explains that statistical agencies, like the Bureau, "exist to produce statistical products that inform inferences about their respective societies." The principal purpose of this data collection is "to permit inference about those societies and their various groups and communities."[189] The collection of demographic data on race, ethnicity, and SOGI is helpful for these population-level analyses.

The Bureau's reliance on this generic idea that more data means more confidentiality violations is misguided for technical reasons too. In practical terms, there are various constraints that render it effectively impossible to generate a "confidentiality-violating" inference from anonymized decennial census datasets. These constraints include both the scale of the datasets at issue and the relatively small number of options available on the census form (i.e. to identify one's race, ethnicity, or household relationships). Indeed, the aforementioned Bureau source makes the additional point that "not all inferences" from statistical products are "confidentiality violating," using as an example the 2020 Census's collection of data on the "racial and ethnic makeup" of a given state.[190] That source also notes that the Census Act prohibits disclosures that permit the public to determine the responses of a given specified individual. Also undermining its position, the Bureau has not provided any evidence that impermissible disclosures have resulted from its publication of data from any recent decennial census.

Finally, the Bureau does not address why its existing "'disclosure avoidance' techniques, which effectively introduce uncertainty into the overall data to reduce the likelihood that the data of any particular respondent will be identifiable," are inadequate to protect privacy while also maintaining the contested demographic questions.[191] Instead of taking the extreme path of eliminating nearly all demographic questions, the Bureau could have improved its disclosure avoidance techniques, or at least explained why the techniques could not be improved to address the agency's concerns. For example, the Bureau does not explain why it would not be feasible to suppress demographic data only for those limited census blocks where there is a risk of

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[188] *Id.* at 57529 n.9 (citing Michael B. Hawes et al., Toward a Principled Framework for Disclosure Avoidance, Harv. Data Sci. Rev. § 3 (Aug. 20, 2025)).

[189] Hawes, M.B. et al., *Toward a Principled Framework for Disclosure Avoidance*, Harv. Data Sci. Rev. § 3 (Aug. 20, 2025), https://hdsr.mitpress.mit.edu/pub/bux70n5u/release/3.

[190] *Id.* at 5.1 ("It is also important to note that not all inferences are confidentiality violating. Statistical agencies exist to produce statistical products that inform inferences about their respective societies.").

[191] Criteria, 91 Fed. Reg. at 57527.

identification (e.g., blocks with a small population)—rather than eliminating the collection of demographic data entirely.

d. The Bureau's Claim about the "Sensitivity" of Demographic Questions Is Unfounded

The Criteria further asserts that questions about race, ethnicity, and SOGI are potentially too sensitive to include in the decennial census. As an initial matter, the Bureau has extensive experience, expertise, and methods for testing the sensitivity of particular questions on a census survey. Yet the Bureau offers no concrete evidence that these questions are actually sensitive in any way.

On its face, the Bureau's claim strains credulity. Race and ethnicity data have been collected throughout this nation's history, including during periods of deep racial division, such as slavery, the Civil War, and Reconstruction. Indeed, a question about race was added to the census questionnaire in 1960, during the height of the Civil Rights Movement. In the ensuing decades, the decennial census continued to ask about race and ethnicity notwithstanding the persistent national discourse about race. Given this historical record, the Bureau's claim that, in 2026, it is suddenly too risky to ask these demographic questions holds no water.

The only support the Bureau offers is a citation to a handful of recent Supreme Court decisions about the use of race in the voting and educational contexts, and an Executive Order about federal policy regarding "diversity, equity, and inclusion." But the lawfulness of particular uses of demographic information has no bearing on whether the collection of demographic data is too "sensitive" for survey respondents. If anything, the cited cases reveal why census demographic data on race and ethnicity continues to be important. For example, in *Louisiana v. Callais*, while the Supreme Court narrowed the grounds for stating a claim under Section 2 of the Voting Right Act, it recognized that demographic data could in some cases support an inference of unlawful racial motivation—"for example, [where] the application of a State's districting algorithm yields numerous maps with districts in which the members of a minority group constitute a majority, and . . . the State cannot provide a legitimate reason for rejecting all those maps and eliminating all majority-minority districts."[192] This example assumes the continued availability of granular racial demographic information from the decennial census.

The Criteria's claim about the sensitivity of SOGI questions is similarly illogical. As an initial matter, none of the court cases cited by the Bureau relate to sexual orientation or gender identity. Moreover, assuming the Bureau wipes any reference to sexual orientation from the census (though its precise method is unclear), it still proposes to require each respondent to name every person in their household, identify their relationship to that person, and state that person's sex.[193] A respondent would therefore still likely reveal information about their sexual orientation by virtue of answering the remaining questions as required by the Criteria. Take, for example, two men who are married and live in the same household. One of them would state their

[192] *Callais*, 146 S. Ct. at 1156.

[193] Criteria, 91 Fed. Reg. at 57530 (proposing 15 C.F.R. § 70.2(b)).

partner's name, identify them as their spouse, and identify that person's sex as male, revealing something about the same-sex nature of their relationship. The Bureau does not explain why such an outcome would be any less sensitive than directly asking about sexual orientation.

The Bureau also tries to substantiate its sensitivity claim by citing a one-justice concurrence in a Supreme Court decision that describes race as a "social construct."[194] Whatever the accuracy of that statement or the concurrence's use of it, it is irrelevant to whether demographic questions on the census survey are "sensitive" or should be removed. Indeed, the Bureau has itself *acknowledged* that questions about race are intended to capture race as a social concept—and not to identify race biologically, anthropologically, or genetically.[195] That race and ethnicity are socio-political constructs is a fundamental principle of the three-decade-long cross-disciplinary interagency research and analysis upon which the Bureau has based its development of demographic questions.[196] Likewise, the Bureau retains questions about sex, even though it, too, is colored by social norms. For example, the socially constructed binary of male and female excludes the biological reality of intersex people.[197] To be sure, sex is a vital question that *should* remain on the decennial census. What is unclear is how the Bureau reached its conclusion that some demographic questions are so sensitive to justify exclusion, but sex is not.

e. The Bureau's Professed Concerns Are Contradicted By its Plan to Exclude Noncitizens from the Decennial Census

The Bureau's cursory and generalized concerns that demographic questions will harm respondent privacy and response rates, and are too sensitive to ask respondents, ring particularly hollow given the Bureau's plan to link decennial census responses to immigration status—including through a potential question on legal status. The Bureau puts forth *no* evidence that demographic questions will actually have the deleterious effects the Bureau claims. Yet, the evidence is extensive and unequivocal that asking about or seeking to ascertain immigration status *is* a sensitive issue and that linking census responses to immigration status will create fear and confusion, chill response rates, and gravely undermine the accuracy of the census count. *See* Part I.C.2.d above.

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[194] *Id.* at 57527 (citing *SFFA*, 600 U.S. at 276–77 (Thomas, J., concurring)).

[195] U.S. Census Bureau, Race, *supra* note 166.

[196] *See, e.g.*, Office of Mgmt. & Budget, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58782, 58782 (Oct. 30, 1997) ("[Race and ethnicity] categories represent a social-political construct designed for collecting data on the race and ethnicity of broad population groups in this country, and are not anthropologically or scientifically based. . . . [They] should not be interpreted as being primarily biological or genetic in reference. Race and ethnicity may be thought of in terms of social and cultural characteristics as well as ancestry.").

[197] "Intersex" generally refers to individuals who are born "with sex traits that don't fit into typical male or female patterns," such as "chromosomes, hormones, reproductive organs or genitals." Cleveland Clinic, Intersex (May 1, 2026), https://my.clevelandclinic.org/health/articles/16324-intersex [https://perma.cc/NS3N-U7C9].

f. The ACS Is Not a Suitable Alternative for Decennial Census Demographic Data

While the ACS also collects information about race and ethnicity, ACS data is not a substitute for decennial census data on race and ethnicity. The Bureau acknowledges as much in the PRIA, where it notes that "the power of the ACS is the ability to provide characteristics for race and ethnicity groups; whereas population totals for race and ethnicity groups from the decennial census and population estimates *are more reliable*."[198] Because the decennial census is the only source of block-level data on race and ethnicity, decennial census data is more granular than ACS data. Further, because decennial census data informs the sampling weights for the ACS, distorting the decennial census, as the Criteria proposes, will degrade the quality of ACS data as well.[199] Indeed, the Bureau acknowledges that "[o]mitting race and ethnicity from the 2030 Census questionnaire would require the development of estimates from a base population derived from outdated and/or less accurate data and would deteriorate the accuracy of the estimation method itself."[200] In other words, "the decennial . . . and [ACS] are methodologically intertwined, so removing race from the decennial would impact the population estimates and [ACS]."[201]

2. The Criteria Fails to Acknowledge or Explain its Departure from Existing Bureau Policies

In addition to being a radical and unexplained departure from two centuries of decennial census practice, the Criteria's proposed abandonment of demographic questions is also inconsistent with existing Bureau policies—a fact that the Criteria fails entirely to explain, let alone address.

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[198] PRIA, *supra* note 4, at 13 (emphasis added).

[199] Beth Jarosz and Daniel Cork, Would Eliminating Race and Ethnicity Questions Impair the Decennial Census?, Massive Data Institute at the McCourt School of Public Policy, Georgetown University (Sept. 2026) at 7, https://georgetown.app.box.com/s/hv8e59kiho55wt27cwq8eyj1y1td9en3 ("The most damaging consequence of removing demographic questions, however, lies in the downstream degradation of the nation's data ecosystem. Without decennial race and ethnicity data, other surveys (like the American Community Survey, Current Population Survey, and numerous state and local surveys) will lose their benchmark and will be less reliable. Rather than improving data quality, removing race and ethnicity questions from the census would deprive local governments, small businesses, and community organizations of the information they need to plan effectively for the future.").

[200] PRIA, *supra* note 4, at 15.

[201] Le & Klein, The Public Health Cost of Eliminating Race and Ethnicity Data, *supra* note 151.

a. The Elimination of Demographic Questions Will Harm the Bureau's Goal of Reducing the Census's Undercount of Racial and Ethnic Minorities

The elimination of decennial census data on race and ethnicity will undermine the Bureau's own decades-long aim of improving the accuracy of the census count among racial and ethnic minorities.[202]

Despite the Bureau's stated goal of ensuring that the census counts everyone, certain racial and ethnic minorities have historically been undercounted. The Bureau has long "recognized the undercount and the differential undercount as significant problems, and in the past has devoted substantial effort toward achieving their reduction."[203] This problem has been at the forefront of Bureau's agenda since at least 1940.[204]

Notwithstanding the Bureau's longstanding position and efforts, certain racial minority groups continued to be differentially undercounted in the 2010 and 2020 Censuses,[205] and in planning for the 2030 Census, the Bureau announced a detailed research agenda to improve the Bureau's enumeration of historically undercounted communities.[206]

Without decennial census data on race and ethnicity from the 2030 Census, it is unclear how the Bureau will be able to accurately assess the existence of a differential undercount or take steps to ameliorate or prevent such an undercount in future decennial censuses. The Bureau fails entirely to acknowledge this impact or to address how it will analyze and respond to undercounts of racial minorities without decennial census demographic data. The Criteria's proposed prohibition of race and ethnicity questions imply that the Bureau has abandoned its longstanding commitment to addressing the societal and structural barriers that lead to persistent census undercounts of certain racial and ethnic minorities—but that momentous change in position is not mentioned once.

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[202] U.S. Census Bureau, 2015 National Content Test: Race and Ethnicity Analysis Report (Feb. 28, 2017), at ix, https://www2.census.gov/programs-surveys/decennial/2020/program-management/final-analysis-reports/2015nct-race-ethnicity-analysis.pdf [https://perma.cc/92L9-XKVZ] ("The Census Bureau has a long history of conducting research to improve questions and data on race and ethnicity.").

[203] *Wisconsin*, 517 U.S. at 7.

[204] *NAACP v. Bureau of Census*, 382 F. Supp. 3d 349, 353–54 (D. Md. 2019); *see e.g.*, *Wisconsin*, 517 U.S. at 7 (describing efforts to minimize undercount of minority groups in the 1990 census); *see also Klutznick*, 486 F. Supp. at 567 n.5 (same for 1980 census).

[205] Jensen & Kennel, Detailed Coverage Estimates for the 2020 Census, *supra* note 64 (noting a statistically significant undercount of the Hispanic/Latino population in both the 2020 and 2010 censuses).

[206] Robert L. Santos, Director of the Census Bureau, How an Interwoven Research Agenda Will Help Us Enumerate Historically Undercounted People in the 2030 Census (Oct. 26, 2023), https://www.census.gov/newsroom/blogs/director/2023/10/research-undercount-2030-census.html [https://perma.cc/C443-88TS].

C. The Bureau fails to acknowledge or explain its departure from SPD 15 for the 2030 Census

As a federal statistical agency, the Bureau follows the Office of Management and Budget's ("OMB") Statistical Policy Directive No. 15 ("SPD 15"), which provides for consistent collection of race and ethnicity data across the federal government by specifying the format, language, and procedures for collecting such data.[207] In 2024, after years of rigorous research, OMB revised SPD 15 to require, among other things, that agencies requesting data on race and ethnicity use a single combined race and ethnicity question and add Middle Eastern/North African as an additional category.[208] The 2024 revisions responded to longstanding and "growing public pressure for revising and expanding race and ethnicity classifications in the census" to reflect a "nation [that has] become[] more diverse."[209]

The Bureau was closely involved in the research and efforts that led to the "long-awaited overhaul" of SPD 15.[210] Indeed, Bureau staff were among the subject matter experts appointed to the working group that developed the revisions to SPD 15. The group's finalized proposals were also based on "several large-scale, rigorous studies conducted by the Bureau."[211] The Bureau ultimately concluded that the revised SPD 15 was consistent with the Bureau's own extensive research and that SPD 15 "will improve data on race/ethnicity across Bureau programs."[212] The Bureau therefore committed to developing an action plan to implement the updated standards for its various surveys, including the decennial census in 2030.[213] While OMB has since extended

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[207] OMB initially issued SPD 15 in 1977 and then updated it in 1997 and again in 2024. OMB, Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, 89 Fed. Reg. 22182 (Mar. 29, 2024) [hereinafter "SPD 15 (2024)"]; OMB, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58782 (Oct. 30, 1997); OMB, Statistical Policy Handbook, Directive No. 15 (May 1978), https://www2.census.gov/about/ombraceethnicityitwg/1978-statistical-policy-handbook.pdf [https://perma.cc/5W6C-4HCK]; *see generally* U.S. Census Bureau, Updates to Race/Ethnicity Standards for Our Nation U.S. Census Bureau (Dec. 20, 2024), https://www.census.gov/about/our-research/race-ethnicity/standards-updates.html [https://perma.cc/9S6S-JJTN].

[208] SPD 15 (2024), 89 Fed. Reg. at 22182; *see also* U.S. Census Bureau, Updates to Race/Ethnicity Standards, *supra* note 207.

[209] National Research Council, Modernizing the U.S. Census, *supra* note 99, at 141; Thomas Wolf & Maryjane Johnson, Brennan Center for Justice, New Census Questions Are a Critical Step Toward an Improved 2030 Count (April 10, 2024), https://www.brennancenter.org/our-work/analysis-opinion/new-census-questions-are-critical-step-toward-improved-2030-count [https://perma.cc/PHQ9-7JZ7] (describing the 2024 revisions as "help[ing] the U.S. Census Bureau produce data that is more representative of our increasingly diverse country").

[210] Wolf & Johnson, New Census Questions Are a Critical Step Toward an Improved 2030 Count, *supra* note 210.

[211] SPD 15 (2024), 89 Fed. Reg. at 22184.

[212] U.S. Census Bureau, Updates to Race/Ethnicity Standards, *supra* note 207.

[213] *Id.* ("The Census Bureau, like all other Federal Statistical agencies, is required to follow SPD 15. The Census Bureau is developing an action plan for implementing the updated standards in its censuses, surveys,

the deadline to implement SPD 15, and the Bureau has delayed its implementation in the 2027 ACS, the Criteria makes clear that the Bureau has in fact reversed course and no longer intends to honor its commitment to implement the SPD 15 revisions in the 2030 Census.

Inexplicably, the Criteria is entirely silent on SPD 15 and does not address how the Bureau's prior conclusion—that SPD 15 will enhance accuracy of race and ethnicity data and that the 2030 census should incorporate its revisions—can be squared with the Criteria's proposal to prohibit the collection of race and ethnicity data entirely.

Finally, even setting aside the 2024 revisions to SPD 15, the Bureau consistently followed the 1997 version of SPD 15 in the 2000, 2010, and 2020 censuses.[214] Again, the Criteria fails to acknowledge the Bureau's longstanding adherence to SPD 15 or justify its determination to circumvent SPD 15 by declining to ask about race and ethnicity entirely.

D. The Bureau fails to explain its reversal on SOGI data collection

The Criteria fails to acknowledge its total abandonment, indeed prohibition, of SOGI data collection, despite the Bureau's recent efforts to enhance such data collection across its various surveys.

For example, since at least the 2010 Census, the Bureau has "worked to improve measurement of same-sex couple households in its . . . the decennial census."[215] This need was amplified by the 2015 Supreme Court decision *Obergefell v. Hodges*, which legalized same-sex marriage across the nation and "increased the need for estimates of same-sex married couples,"

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and data programs by OMB's required deadline of March 2029."); U.S. Census Bureau, Race, *supra* note 166 ("On March 28, 2024, the U.S. Office of Management and Budget (OMB) published the results of its review of Statistical Policy Directive No. 15 (SPD 15) and issued updated standards for maintaining, collecting, and presenting race/ethnicity data across federal agencies. The Census Bureau is working to implement the updates in all its programs as expeditiously as possible."); U.S. Census Bureau, Census Scientific Advisory Committee, Implementation of the Updated Race/Ethnicity Standards (Sept. 19, 2024) at 7, https://www2.census.gov/about/partners/cac/sac/meetings/2024-09/presentation-implementation-race-ethnicity-standards.pdf [https://perma.cc/894L-68CW] ("Moving forward, we are including the combined race/ethnicity question for data collection formats following SPD 15 guidance into all Decennial Census operational and field tests. . . . Our Race/Ethnicity Research Team is developing the data processing and edit procedures for the 2030 Census.").

[214] U.S. Census Bureau, Updates to Race/Ethnicity Standards, *supra* note 207.

[215] Rose M. Kreider et al., U.S. Census Bureau Working Paper No. SEHSD-WP2017-28, Improving Measurement of Same-Sex Couple Households in Census Bureau Surveys: Results from Recent Tests (Apr. 2017) https://www.census.gov/content/dam/Census/library/working-papers/2017/demo/SEHSD-WP2017-28.pdf [https://perma.cc/G2CS-E44E]; Interagency Working Group on Measuring Relationships in Federal Household Surveys, Improved Measurement of Household Relationships in Federal Surveys (Sept. 2014), at 35-36, https://s3.amazonaws.com/sitesusa/wp-content/uploads/sites/242/2014/04/MRFHS_StatisticalPolicyWorkingPaper201408.pdf [https://perma.cc/AHT9-NNHV] ("The Interagency Working Group on Measuring Relationships in Federal Household Surveys (MRFHS) was established in 2010 to address the long-term challenges in measuring household relationships, including same-sex couples.").

including because some "federal agencies administer programs based on marital status."[216] As a result, the Bureau added to the 2020 Census an option for respondents to identify the same-sex nature of their marriages or partnerships. To the extent that the Criteria's ambiguous language proposes to eliminate this option from the census, the Bureau would be committing a significant change without explanation.

Moreover, such a change would run counter to other evidence motivating the Bureau's addition of the same-sex option. This reform was also an attempt to more accurately count same-sex couples, which were being *overcounted* under the Bureau's prior practices.[217] Prior to the same-sex option in 2020, the Bureau would estimate counts of same-sex couples by piecing together responses to neutral questions. The Bureau's own research found that this practice created inaccurate estimates. However, with the revisions made to the 2020 Census, the Bureau's estimates on same-sex couples are considered far more reliable and accurate.[218]

In line with this trajectory of gathering rather than suppressing SOGI data, the Bureau prepared to test questions concerning sexual orientation and gender identity during the 2024 ACS.[219] This proposal was an attempt to align the Bureau's data collection practices with empirical reality. This reality was clarified when, in 2015, the Bureau conducted pretesting for the Current Population Survey, and respondents recommended that the Bureau add a "nonbinary" response option. This recommendation was bolstered by the fact that over one million adults in the U.S. are estimated to use the term to describe themselves.[220] Likewise, researchers also determined that younger people identify as nonbinary and bisexual at significantly higher rates

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[216] Kreider et al., *supra* note 215, at 2; Improved Measurement of Household Relationships in Federal Surveys, *supra* note 215, at iii.

[217] D'Vera Cohn, 2020 census will ask about same-sex marriages for the first time, Pew Research Center (April 10, 2018), https://www.pewresearch.org/short-reads/2018/04/10/2020-census-will-ask-about-same-sex-marriages-for-the-first-time [https://perma.cc/2BJF-E7KS]. For example, the Bureau found its 2013 data on same-sex couples was actually "an overcount, which it blamed largely on heterosexual married couples who mistakenly checked the wrong gender box on the survey questionnaire." D'Vera Cohn, How many same-sex married couples in the U.S.? Maybe 170,000, Pew Research Center (June 24, 2015), https://www.pewresearch.org/short-reads/2015/06/24/how-many-same-sex-married-couples-in-the-u-s-maybe-170000 [https://perma.cc/D5VE-8UVR]; *see* D'Vera Cohn, Census struggles to reach an accurate number on gay marriages, Pew Research Center (May 13, 2014), https://www.pewresearch.org/short-reads/2014/05/13/census-struggles-to-reach-an-accurate-number-on-gay-marriages [https://perma.cc/V4L7-5HFW]; 2020 Census Snapshot: Methodology Report , UCLA School of Law Williams Institute (Sept. 2025), at 4, https://williamsinstitute.law.ucla.edu/wp-content/uploads/Census-Snapshot-Methodology-Sep-2025.pdf [https://perma.cc/LRR7-G3PH] ("In the 2010 Census, data on same-sex couples were affected by a significant measurement error, where some different-sex couples were mistakenly coded as same-sex couples due to misreporting the sex of one partner.").

[218] 2020 Census Snapshot: Methodology Report, *supra* note 217, at 5.

[219] U.S. Census Bureau, American Community Survey Methods Panel: 2024 Sexual Orientation and Gender Identity Test, 88 Fed. Reg. at 64405.

[220] *Id*.

than older people.[221] The Criteria does not even acknowledge these efforts from the Bureau to develop questions about SOGI, let alone provide a rationale for abandoning them and, going a step further, to affirmatively prohibit questions addressing sexual orientation.

The Criteria does not recognize this past work to enhance SOGI data collection nor contemplate how its destruction of such efforts threaten the accuracy and dependability of census data—per the Bureau's own research.

IV. The Criteria Is Procedurally Deficient

Finally, the Criteria suffers from numerous procedural deficiencies.

A. Lack of Meaningful Opportunity to Comment

As noted above, the Criteria is ambiguous and lacks vital details, including, but not limited to, (a) whether the Bureau proposes to exclude noncitizens from the census count for all purposes or only for apportionment; (b) what administrative records the Bureau intends to consider to determine citizenship status; (c) the wording of a possible legal status question for the decennial census form; (d) whether the Bureau has considered the efficacy of administrative records and a legal status question in producing reliable citizenship data; (e) whether the Bureau has assessed the impact of its proposal on response rates; (f) whether the Bureau proposes to prohibit a stand-alone question on sexual orientation or to modify the existing household relationship question to omit references to same-sex relationships; and (g) what, if any, evidence the Bureau considered in reaching its proposal to prohibit demographic questions about race, ethnicity, and SOGI from the decennial census. As such, the Localities are deprived of the opportunity to meaningfully comment on critical aspects of the Criteria and the Bureau's reasoning.

B. Failure to Comply with Executive Order 13,132

Under Executive Order 13,132, federal agencies must "consult[] with State and local officials early in the process of developing" any rule with federalism implications and substantial compliance costs to State and local governments.[222] The Criteria plainly has federalism implications and is likely to impose substantial costs on states and localities, including because it skews decennial census data in a manner that reduces political representation for some states and localities, undermines federal funding for the Localities, and hampers critical local decision-

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[221] Christopher A. Julian et al., *Responses to Sexual and Gender Identity Measures in Population-Level Data by Birth Cohort: A Research Note*, Demography (Feb. 2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC12665050/; *see generally* Current Measures of Sexual Orientation and Gender Identity in Federal Surveys, Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity in Federal Surveys, (Aug. 2016), https://nces.ed.gov/FCSM/pdf/buda5.pdf [https://perma.cc/A37U-6PCS].

[222] Exec. Order No. 13132, 64 Fed. Reg. 432557 (Aug. 4, 1999).

making. As such, the Bureau is required to undertake the consultation process required by Executive Order 13,132.

C. Failure to Comply with Executive Orders 12,866 and 13,563

Executive Order 12,866 requires the Bureau to assess *all* costs and benefits of the Criteria and to consider all possible or feasible regulatory alternatives—including the alternative of not issuing the regulation. Executive Order 13,563 also requires that agencies quantify the costs and benefits of their proposed regulations.[223] The Criteria fails to comply with these requirements. While the PRIA purports to provide a cursory examination of the costs and benefits of the Criteria, it fails entirely to assess numerous costs associated with the Criteria, including, but not limited to, harms to (a) decennial census response rates, (b) accuracy of census data; (c) federal funding to states and localities, (d) public health, safety, and other government services that rely on population and demographic data; and (e) state and local election redistricting efforts.

V. Conclusion

For the foregoing reasons, the undersigned Localities urge the Bureau to withdraw the Criteria in its entirety.

Sincerely,

David Chiu
City Attorney
City and County of San Francisco

Tony LoPresti
County Counsel
County of Santa Clara

[223] Exec. Order No. 13563, 76 Fed. Reg. 3821 (Jan. 18, 2011); Exec. Order No. 12866, 58 Fed. Reg. 51735 (Sept. 30, 1993).

Appendix A - Additional Signatories

The United States Conference of Mayors
Santa Clara County Office of Education

The City of Alameda, California
The City of Albuquerque, New Mexico
The County of Allegheny, Pennsylvania
The City of Athens, Ohio
The City of Baltimore, Maryland
The City of Beaverton, Oregon
The City of Boston, Massachusetts
The City of Cambridge, Massachusetts
The City of Chicago, Illinois
The City of Cincinnati, Ohio
The City of Cleveland, Ohio
The City of Columbus, Ohio
The City of Elizabeth, New Jersey
The City of Evanston, Illinois
The City of Everett, Washington
The City of Fitchburg, Massachusetts
The County of Hennepin, Minnesota
The City of Los Angeles, California
The City of Madison, Wisconsin
The City of Mansfield, Ohio
The County of Martin Luther King Jr., Washington
The City of Minneapolis, Minnesota
The City of Montgomery, Alabama
The Metropolitan Government of Nashville & Davidson County, Tennessee
The City of New Britain, Connecticut
The City of New Haven, Connecticut
The City of New York, New York
The City of Pittsburgh, Pennsylvania
The City of Plainfield, New Jersey
The City of Portland, Oregon
The City of Quincy, Illinois
The County of Ramsey, Minnesota
The City of Redmond, Washington
The Town of Ridgway, Colorado
The City of Sacramento, California
The City of San Diego, California
The City of San José, California
The County of San Mateo, California

The City of Seattle, Washington
The City of South Fulton, Georgia
The City of Syracuse, New York
The City of Tucson, Arizona
The City of Warren, Ohio
The City of West Sacramento, California

Ryan Richardson
City Attorney, City of Oakland, California