

August 7, 2018

Ms. Jennifer Jessup
Departmental Paperwork Clearance Officer
Department of Commerce
Room 6616
14th and Constitution Avenue, NW
Washington, DC 20230
Via Email: PRAComments@doc.gov

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

To Whom It May Concern:

On behalf of the National Asian Pacific American Bar Association (NAPABA), I write to offer public comment on the proposed 2020 Census information collection. We strongly believe that the Department of Commerce should not include a citizenship question on the 2020 Census form. We also urge you to offer comprehensive language service assistance for individuals with Limited English Proficiency who may need help answering census questions in order to ensure the collection of accurate and reliable information.

NAPABA is the national bar association representing the interests of Asian Pacific American (APA) attorneys, judges, law professors, and law students. NAPABA represents the interests of over 50,000 attorneys and more than 80 national, state, and local Asian Pacific American bar associations. Our members include solo practitioners, large firm lawyers, corporate counsel, legal services and non-profit attorneys, judges, and lawyers serving at all levels of government. Through our national network of affiliates and communities, NAPABA provides a strong voice for increased diversity of federal and state judiciaries, advocates for equal opportunity in the workplace, seeks to eliminate anti-Asian crime and anti-immigrant sentiment, and promotes professional development of people of color in the legal profession.

The United States Constitution calls for the federal government to conduct an “actual enumeration” of every person residing in the country, not just citizens,¹ and the inclusion of a citizenship question will adversely affect your ability to collect accurate and reliable information. Moreover, because census data is used to apportion congressional seats, federal funding, and other services, the undercounting of individuals that will result from the inclusion of a citizenship question will adversely affect communities across the country.

Further, it is important that the U.S. Census Bureau takes steps to close the language access gaps faced by many communities when answering the census questionnaire. Many individuals

¹ U.S. Const. art. I, § 2, cl. 3.

lack the language tools to answer questions accurately, and if the Census Bureau does not expand the number of languages to which the census form is translated, these individuals will continue to struggle with efforts to complete these forms and we will not be able to collect accurate and reliable information

I. The Citizenship Question Will Have Detrimental Impacts on Communities

The addition of a citizenship question on the 2020 Census will jeopardize an accurate count, which will have significant implications for all communities in the United States. As an organization representing Asian Pacific Americans, we believe an accurate count of the nation's population is integral to our democracy. Not only is the decennial census mandated by the Constitution², the data collected affect our nation's ability to ensure equal representation and equal access to governmental and non-profit resources for all Americans. Census results are used to allocate seats and draw district lines for the U.S. House of Representatives, state legislatures, and local boards; to direct more than \$800 billion annually in federal assistance to states, localities, and families; and to guide community decision-making affecting schools, housing, health care services, business investment, and much more.³

According to the 2020 Census Operational Plan, the Census Bureau did not test the citizenship question in any of its tests conducted prior to 2018 for the 2020 Census.⁴ On January 26, 2018, six former directors of the Census Bureau wrote to Secretary Ross strongly opposing the addition of a citizenship question, warning that the question would significantly lead to lower response rates.⁵ Adding this question without adequately testing its effect may have significant impacts on the reliability of the resultant data.

The citizenship question will instill more fear than already exists in Asian Pacific American and other immigrant communities. The citizenship question is unnecessarily intrusive and will raise concerns among individuals about the confidentiality of their personal information and the misuse of such information by government authorities.⁶

a. The Continuous Undercounting of Asian Pacific Americans

A fair and accurate census is essential for all basic functions of our society. Historically, certain groups have been at a higher risk of not being fully counted in the census. These groups are referred to as "hard-to-count" populations.⁷ Asian Pacific American populations have been continuously at-risk of being undercounted by the census, which often disadvantages their

² *Id.*

³ "Why We Conduct the Decennial Census." U.S. Census Bureau, 19 October 2017. Available at <https://www.census.gov/programs-surveys/decennial-census/about/why.html>

⁴ 2020 Census Operational Plan, Census Bureau. Available at <https://www2.census.gov/programs-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan-exec-sum-2.pdf>

⁵ Letter to Secretary Ross, Washington Post. Available at [https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-](https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf?tid=a_mcntx)

[Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf?tid=a_mcntx](https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf?tid=a_mcntx)

⁶ Memorandum for Associate Directorate for Research and Methodology, Center for Survey Measurement. 20 September 2017. Available at <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>

⁷ "Will You Count? Asian Americans and Native Hawaiians and Pacific Islanders (NHPs) in the 2020 Census" The Leadership Conference Education Fund, 17 April 2018. Available at <http://civilrightsdocs.info/pdf/census/2020/Fact-Sheet-AA-NHPI-HTC.pdf>

communities.⁸ Nearly one in five Asian Americans live in hard-to-count census tracts, which has caused greater challenges in finding affordable housing, higher rates of poverty and unemployment, and lower educational attainment.⁹ Being hard-to-count can lead to unequal political representation and unequal access to vital public and private resources for these communities.¹⁰

b. Access to Legal Services

Undercounting communities in the 2020 Census can drastically impact how federal funding is allocated to states and localities. The allocation of federal funds is determined by census-derived data, including funding for state and local governments, as well as for nonprofits and legal services providers to deliver legal aid to communities.¹¹ Because of the likelihood of inequitable distribution of resources for basic community needs, many communities will be unable to seek access to legal services and courts because of their inability to pay.

The Legal Services Corporation, a congressionally chartered organization and major source of legal aid funding, is statutorily required to use Census data to determine the amount of funds available for legal aid programs in geographic areas across the country.¹² Of the approximately two million individuals served by the LSC, more than 23,000 clients identify as Asian Pacific American.¹³

Access to legal aid and assistance programs is necessary for low-income and immigrant communities. For example, members of the Asian Pacific American community rely on the services provided by these legal aid organizations for assistance addressing housing claims, domestic violence, and human trafficking.¹⁴ Organizations that serve these populations use Census data to determine language and outreach needs to identify how to better serve the community.

An inaccurate count harms these programs in two ways. First, appropriate funding allocations will not be made based on the population size in the region, reducing the number of people who can get comprehensive legal aid. Second, the organizations will not have accurate data with which to make long-term service decisions, such as determining which languages in which to conduct outreach or hire bilingual staff.

⁸ “DSSD Census Coverage Measurement Memorandum Series #2010-G-01: 2010 Census Coverage Measurement Estimation Report: Summary of Estimates of Coverage for Persons in the United States.” U.S. Census Bureau, 22 May 2012. Available at https://www.census.gov/coverage_measurement/pdfs/g01.pdf.

⁹ Lowenthal, Terri Ann et al. “Race and Ethnicity in the 2020 Census: Improving Data to Capture a Multiethnic America.” The Leadership Conference Education Fund, September 2014. Available at <http://civilrightsdocs.info/pdf/reports/Census-Report-2014-WEB.pdf>

¹⁰ See footnote 7.

¹¹ “U.S. Census 2020.” National Council of Nonprofits. Available at <https://www.councilofnonprofits.org/trends-policy-issues/us-census-2020>

¹² Omnibus Consolidated Rescissions and Appropriations Act of 1996. Pub. L. 104-134, 110 Stat. 1321, Sec. 501 (April 26, 1996).

¹³ Meredith Higashi et al., *Interpreting Justice - Progress & Challenges on Language Access*. National Asian Pacific American Bar Association, p. 46 (2017).

¹⁴ “APALRC 2017 Program Report.” Asian Pacific American Legal Resource Center. Available at <http://www.apalrc.org/apalrc-2016-program-report/>

c. Impact on the Practice of Law

In addition to many of these individuals not having access to legal services, private attorneys will be drastically impacted. There is a long history of private attorneys using census-derived data to help their clients, such as businesses and entrepreneurs, make critical business decisions.¹⁵ Further, government and non-profit attorneys rely on census and American Community Survey data when bringing enforcement or advocacy actions.

For example, using Census data, the Asian Pacific American community has identified jurisdictions that need to comply with Section 203 of the Voting Rights Act, whereby jurisdictions must provide language assistance when the population includes 5% or more of a single language minority group speaks a particular language other than English.¹⁶ The Asian American Legal Defense and Education Fund used this data to enforce a U.S. Census Bureau determination¹⁷ that translated materials must be provided in Bangladeshi in Queens County, New York.¹⁸ Non-profit and pro-bono attorneys are also able to use this data to direct resources to the covered jurisdictions in the twelve states with Asian language requirements to ensure compliance with Section 203.¹⁹

Data analytics are crucial for businesses of all sizes, including attorneys.²⁰ Data derived from the Census Bureau, for data analytics, is useful for attorneys in a broad variety of areas.²¹ Both small and large firms use data analytics to optimize pricing and discounts for clients and to garner a better understanding of the demographics for the populations they serve in a specific geographic area.²² Without accurate data, private attorneys are unable to give accurate advice, which will inhibit their ability to successfully counsel their clients.

d. Impact on Jurisdictions with Immigrant Communities

Asian Pacific Americans are the fastest growing population in the United States and one out of seven Asian immigrants are undocumented.²³ Research has shown that respondents are worried about their immigration status and refuse to provide complete or correct information about household members due to concerns regarding confidentiality.²⁴ Not counting immigrant

¹⁵ “The Value of the American Community Survey: Smart Government, Competitive Businesses, and Informed Citizens.” Economics and Statistics Administration Office of the Chief Economist, p. 32-35, April 2015. Available at <https://www.commerce.gov/sites/commerce.gov/files/migrated/reports/the-value-of-the-accs.pdf>

¹⁶ 52 U.S.C. § 10301 (2006)

¹⁷ “Eleven States Must Now Provide Asian American Voters with Bilingual Ballots.” Asian American Legal Defense and Education Fund, 12 Oct. 2011. Available at <http://aaldef.org/press-releases/press-release/eleven-states-must-now-provide-asian-american-voters-with-bilingual-ballots.html>

¹⁸ “NYC Board of Elections Settles Lawsuit on Bengali Ballots in Queens.” Asian American Legal Defense and Education Fund, 24 March 2014. Available at <http://aaldef.org/press-releases/press-release/nyc-board-of-elections-settles-lawsuit-on-bengali-ballots-in-queens.html>.

¹⁹ Voting Rights Act Amendments of 2006, Determinations Under Section 203, 81 FR 87532 (2016)

²⁰ McDonald, M. “Data Analytics for Lawyers.” Above The Law. 28 February 2017. Available at <https://abovethelaw.com/2017/02/data-analytics-for-lawyers/>

²¹ *Id.*

²² *Id.*

²³ Wang, Alton. “Citizenship Question on the Census will Undercount Immigrant Communities.” AAPI Data, 27 March 2018. Available at <http://aapidata.com/blog/citizenship-question-on-the-census-will-undercount-immigrant-communities/>

²⁴ See footnote 6.

populations will cost cities and states federal money, which will result in a reduction of services to all residents.²⁵ Localities provide the same level of public services like fire, police, and emergency medical treatment to immigrants, regardless of status, as they do to U.S. citizens. If immigrants are afraid to respond to the question, and as result are not counted in the 2020 Census, states and other jurisdictions will lose out on millions in federal funding and other support they would otherwise be entitled to.²⁶

For all of the aforementioned reasons, the 2020 Census should not include a question on citizenship that will undermine a successful count of our nation's people. The inclusion of a citizenship question on the 2020 Census will have a significant adverse impact on Asian Pacific American communities across the nation. Given the current political landscape, trust in the government from immigrant communities and communities of color overall has decreased drastically. Given the significant numbers of immigrants from Asian and Pacific Islander countries in the United States, it is important that the government does not take steps to further the likelihood of an undercount of these populations.

II. Language Access Services

We encourage the Census Bureau to seriously address, the need to accurately count those who are limited English proficient²⁷ (LEP), including allocating significant resources to engage the population. Even before the addition of a citizenship question, Asian Pacific American communities have in the past been undercounted because of existing language barriers on the census. If LEP communities do not have adequate language access resources, participation in the 2020 Census will be low. Further, Executive Order 13166 mandates that federal agencies identify any need for services to those with LEP and develop and implement a system to provide those services so LEP individuals can have meaningful access to them.²⁸

According to data collected from the Census and the American Community Survey (ACS) data, LEP individuals accounted for 9 percent, or over 25 million, of the U.S. population over the age of five.²⁹ Presently, one-third of the total Asian American population is of LEP, and nearly three-fourths of the Asian American population speak another language at home other than English.³⁰ Three-fourths (75 percent) of Asian Americans and 41 percent of Native Hawaiian and Pacific Islanders (NHPIs) speak a language other than English, with 34 percent of Asian Americans and 13 percent of NHPIs speaking English less than "very well."³¹ LEP rates are almost 70 percent for some groups, such as Burmese Americans.³²

²⁵ Longley, Robert. "Should the US Census Count Undocumented Immigrants?" ThoughtCo. 22 February 2018. Available at <https://www.thoughtco.com/should-us-census-count-illegal-immigrants-3320973>

²⁶ *Id.*

²⁷ A person who is not fluent in English, often because they are foreign born and/or English is not their native language.

²⁸ Exec. Order No. 13166.

²⁹ Pandya, C., McHugh, M., and Batalova, J. "Limited English Proficiency Individuals in the United States: Number, Share, Growth, and Linguistic Diversity." Migration Policy Institute. December 2011. Available at <https://www.migrationpolicy.org/research/limited-english-proficient-individuals-united-states-number-share-growth-and-linguistic>

³⁰ See footnote 7.

³¹ *Id.*

³² *Id.*

Since Asian Pacific American communities may lack language tools to answer the census accurately, they are at a disadvantage. The census will then provide inaccurate data that will significantly affect public policy. Along with the citizenship question, language barriers place Asian Pacific American communities in hard-to-count populations³³ and without effective language access strategies, the 2020 Census will drastically undercount many limited English proficient households.

In order to maximize response rates, all LEP individuals need to be made aware of language access resources. Although these resources are available in various languages, individuals may not know how to obtain access to these resources because of their incapability to understand English fully. Information on language guides should be provided well ahead of time and translated so that all persons will be informed and able to access language guides in order to successfully complete the census questionnaire. The Census Bureau should ensure that all forms are translated and available in both print and digital formats, advertising is done in in-language media, and a language line is made available to assist with translation needs.

III. Conclusion

We strongly urge the U.S. Census Bureau to exclude the citizenship question from the 2020 Census. The addition of the question in its current state will likely lead to a negative impact on Asian Pacific Americans other minority communities, and legal service providers. We also strongly urge the U.S. Census Bureau to take additional steps to ensure that all people may be counted, regardless of their English proficiency, by providing effective language access services.

Thank you for this opportunity to provide public comment and for your important work in carrying out the 2020 decennial census. NAPABA stands ready to work with you and the Census Bureau to ensure an accurate count of all people in the 2020 Census and provide additional information or answer questions, as necessary.

Sincerely,



Tina Matsuoka
Executive Director

³³ *Id.*