



**STATEMENT OF  
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THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS**

**“PROGRESS REPORT ON THE 2020 CENSUS”**

**HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM**

**May 8, 2018**

Chairman Gowdy, Ranking Member Cummings, and Members of the Committee: I am Vanita Gupta, president & CEO of The Leadership Conference on Civil and Human Rights. Thank you for the opportunity to submit this statement for the record in this important hearing.

The Leadership Conference is a coalition charged by its diverse membership of more than 210 national organizations to promote and protect the civil and human rights of all persons in the United States. Founded in 1950 by A. Philip Randolph, Arnold Aronson, and Roy Wilkins, The Leadership Conference works in support of policies that further the goal of equality under law through legislative advocacy and public education.

The Leadership Conference provides a powerful unified voice for the many constituencies of the coalition: persons of color, women, children, individuals with disabilities, LGBTQ individuals, older Americans, labor unions, major religious groups, civil libertarians, and human rights organizations.<sup>1</sup> Given the breadth of our coalition, The Leadership Conference is ideally positioned to address many of the most pressing issues affecting the successful implementation of Census Bureau programs, surveys, and initiatives. We and the Leadership Conference Census Task Force co-chairs, NALEO Educational Fund and Asian Americans Advancing Justice-AAJC, have a long record of first-hand experience working in support of previous censuses. For the 2010 Census, we undertook the most comprehensive and extensive effort by a stakeholder organization to promote participation in historically hard-to-count communities and to mobilize local advocates in support of the census by highlighting the community benefits, civil rights implications, and constitutional imperative of an accurate count. We are now building upon our previous work to help ensure that no one is left out of the 2020 Census.

As I mentioned last October when I had the privilege of testifying before this committee, our coalition views an accurate and fair census, and the collection of useful, objective data about our nation’s people, housing, economy, and communities generally, to be among the most important civil rights issues of our day. Not only is the constitutionally mandated census

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central to apportioning political power at every level of our representative form of government, but the data collected influence the allocation of more than \$800 billion in federal funds every year,<sup>ii</sup> along with countless policy and investment decisions by government agencies, nonprofit organizations, and private enterprise.

In my testimony, I outlined a number of risks threatening a fair and accurate count, including the risk posed by an 11<sup>th</sup> hour addition of a new and untested question that could derail years of careful research. Those risks have now increased significantly because of the misguided decision of Commerce Secretary Wilbur Ross to add a citizenship question to the 2020 Census. We are also alarmed that the Trump administration is at the same time discarding years of painstaking, objective research that would improve the collection and reporting of data about the nation's diverse and ever-changing population.

### **The Need for Robust Oversight**

Commerce Secretary Ross failed a crucial test of leadership when he buckled to President Trump, Attorney General Jeff Sessions, and their anti-immigrant agenda, and agreed to add a new and untested citizenship question to the 2020 Census – one that mainstream census experts warned would cause participation in the census to plummet, while increasing costs and lowering accuracy of the count. This decision sacrifices the integrity, fairness, and accuracy of the count. For the good of our democracy, Congress must overturn his decision.

That is why this hearing is so important. In a letter joined by more than 300 civil rights, faith, and labor groups,<sup>iii</sup> we had urged this committee to promptly conduct oversight hearings so that Secretary Ross could explain his decision to add an untested citizenship question to the 2020 Census, reversing prior statements in which he expressed concerns about adding untested questions to this committee. In that letter, we asked for Secretary Ross to explain why he disregarded the advice of six former Census Bureau directors from Republican and Democratic administrations, who stated in a January 26 letter to the secretary, “We strongly believe that adding an untested question on citizenship status at this late point in the decennial planning process would put the accuracy of the enumeration and success of the census in all communities at grave risk.”<sup>iv</sup>

Other reports indicate that the Commerce Department overruled the advice of career officials at the Census Bureau.<sup>v</sup> Officials rightly worried that adding a citizenship question to the decennial census could depress response rates and lead to an undercount. These officials worked throughout the decade to understand the intricacies of the census and how asking certain questions can affect response rates, data collection methods, truthfulness of responses, and overall willingness to be counted in the census. Their advice should not be disregarded, especially for an issue that Secretary Ross himself acknowledged was “a big and very controversial request.”

Our letter also urged this committee to ask why Secretary Ross believes the citizenship question was “well-tested,” as stated in his memo explaining the decision, when in fact the question has never been tested in a contemporary census-like environment. While the American Community Survey includes a citizenship question, as did the census “long form” before it, the question has not been asked on the census form that goes to all households since 1950. As the former census directors highlighted, every

census is different, and the environment in which a census occurs is a significant factor. Small changes to the order of questions, wording, and instructions can have significant and often unexpected consequences for response rates and the quality and truthfulness of answers. Without thorough testing and analysis, the consequence of adding a citizenship question to the 2020 Census on data quality and census accuracy, are unknown.<sup>vi</sup>

We also urged lawmakers to ask Secretary Ross to explain how the inclusion of the question will impact the bureau's ability to reach and count all communities equally well, especially in the current environment of fear. Acting Census Director Ron Jarmin acknowledged in testimony before the House Commerce-Justice-Science Appropriations Subcommittee last month that the question would have an impact on response rates, and that some communities could be adversely affected to a greater degree than others. It is not, as Secretary Ross asserts, the responsibility of stakeholders to demonstrate that including a citizenship question will depress response rates. Rather, it is the secretary's job to ensure through rigorous research and testing that the question will not affect the level of response and the accuracy of the results for all population groups and communities.

The Census Bureau noted, in a presentation in November 2017, that there was growing fear and reluctance to fill out the census and other bureau surveys in the current political climate. A citizenship question is likely to exacerbate those fears. Secretary Ross and his representatives must explain and document with objective scientific evidence why he believes this would not be the case.

Finally, our letter called on Secretary Ross to satisfy the committees of legislative jurisdiction that political motivations did not improperly taint the decision to add a citizenship question. On March 19, the Trump reelection campaign sent an email to supporters saying, "The President wants the 2020 United States Census to ask people whether or not they are citizens." The campaign followed up on March 28 with an email celebrating the secretary's decision.

The conduct of the decennial census is not a political function. The U.S. Constitution mandates a count of every person in the United States in order to apportion seats in the U.S. House of Representatives among the states. Since 1790 every census has included citizens and non-citizens alike. The Constitution vests Congress with the responsibility for overseeing the enumeration and achieving that goal. While the census – as the basis for political apportionment and equal representation – has political consequences, the conduct of the census must be strictly nonpartisan and non-political. Congress has charged the Commerce Secretary (who may delegate responsibilities to a Census Director) with carrying out the census through an agency – the U.S. Census Bureau – that is an internationally respected statistical agency. Allowing political considerations to taint census-related decisions that should be driven strictly by scientific considerations and quality standards does a disservice to an agency and its staff with a proud tradition of scientific excellence.

### **Citizenship Question and Census Accuracy**

Even before this disastrous decision, state and local officials and community leaders were deeply concerned about the difficulty of achieving a robust response in some communities, given a political climate in which immigrants are demonized and families are increasingly torn apart by federal agents

invading their homes, schools, and places of worship. On March 20 (less than a week before the decision), Secretary Ross testified before the House Commerce-Justice-Science Appropriations Subcommittee that he was still considering the Justice Department's last-minute, "very controversial request" (as he put it) to jam an untested, unnecessary question about citizenship status onto the 2020 questionnaire. I was one of the stakeholders whose views he sought out during that time, and I provided them in a phone call with Secretary Ross and his counsel, outlining why the secretary should reject the Justice Department's request.

In fact, the request had drawn intense opposition from a nonpartisan and ideologically broad group of business leaders, state and local officials, social scientists, and civil and human rights advocates who know how much is at stake with a fair and accurate census. This groundswell of opposition included more than 160 Republican and Democratic mayors,<sup>vii</sup> six former directors of the Census Bureau from Republican and Democratic administrations,<sup>viii</sup> 171 civil and human rights groups,<sup>ix</sup> more than 600 faith leaders,<sup>x</sup> more than 120 of your colleagues within the House of Representatives,<sup>xi</sup> and many others representing a diversity of political ideologies and communities. All were united in their deep-seated concern that an untested citizenship question would compromise preparations for the 2020 Census and jeopardize the accuracy of the count in all communities.

- This alarming decision threatens a fair and accurate count.

As noted earlier, in a January 2018 letter to Secretary Ross, six former census directors said that every census is different and that the environment in which a census occurs is a significant factor.<sup>xii</sup> Small changes to the order of questions, wording, and instructions can have significant and often unexpected consequences for response rates and the quality and truthfulness of answers, they wrote. Furthermore, Secretary Ross himself told this committee at an October 12, 2017 hearing that, "One of the problems with adding questions is it reduces response rates. It may seem counterintuitive, but the more things you ask in those forms, the less likely you are to get them in."

The Census Bureau's own research in 2017 found that asking questions about citizenship on census surveys caused an "unprecedented groundswell in confidentiality and data-sharing concerns among immigrants or those who live with immigrants."<sup>xiii</sup> In test settings from February through September 2017, survey respondents provided incomplete or incorrect information and were visibly nervous about immigration and citizenship questions.<sup>xiv</sup> One Census Bureau interviewer reported that one respondent got up and left her alone in his apartment when the interviewer asked citizenship-related questions.

As one interviewee said, "The possibility that the Census could give my information to internal security and immigration could come and arrest me for not having documents terrifies me."<sup>xv</sup> Even though census data are protected under law from such disclosure, the perception that this could happen existed before the citizenship question was added.

Adding a question about citizenship status into the mix can only heighten suspicions, depress response rates, and sabotage the accuracy of the 2020 count. This decision would affect everyone, with

communities that are already at greater risk of being undercounted – including people of color, young children, and low-income rural and urban residents – suffering the most.

The harm from this decision (if it is not reversed) will be long-lasting and expensive. In addition to driving down response rates, this cavalier action undoubtedly will drive up costs, as the Census Bureau tries to incorporate an untested question with little time to spare, develop new communications and outreach strategies, plan for an expanded field operation, and track down the millions of households that will be more reluctant to participate because of the addition of this controversial question.

- This question is not needed and therefore, this committee should view the stated rationale with skepticism.

What is the benefit here? Sessions and his Justice Department offer a false justification that is repeated in Ross’s decision memo – namely, that this question is critical for Voting Rights Act enforcement. That argument is a bitter lie, laced with cruel irony. Consider that this is the same Sessions who has called the Voting Rights Act “intrusive” and has shown no hesitation in disregarding and undermining voting rights enshrined in law.

During the final years of the Obama administration, I was the Justice Department official responsible for overseeing voting rights enforcement. I know firsthand that data from the ongoing American Community Survey were sufficient for us to do our work. Rigorous enforcement of the Voting Rights Act has never required the addition of a citizenship question on the census form sent to all households. In fact, the census has not collected citizenship data from every household since the enactment of the Voting Rights Act in 1965. The last time this question was asked of everyone, this country was in a pre-civil rights era, when communities of color were systematically undercounted and underrepresented. The Trump-Sessions-Ross argument is a red herring.

But these arguments should sound familiar. The notorious Kris Kobach and other advocates for voter suppression laws have pushed this question before – spurring legitimate suspicion from public officials and other stakeholders who wonder why the Trump administration would seek to undermine an accurate 2020 Census. The Trump campaign and the Republican National Committee validated those suspicions by baring their partisan, nativist intentions in a fundraising email forecasting this decision, telling recipients “the President wants to know if you’re on his side.”

There should be no “side” when it comes to the census; it is foundational to our representative form of government.

The Supreme Court in 2016 ruled unanimously that “representatives serve all residents, not just those eligible or registered to vote,”<sup>xvi</sup> and the Constitution makes clear that the census has a clear purpose: to count all U.S. residents, regardless of background, as the basis for the apportionment of political influence. The Census Bureau spent most of this decade preparing to carry out this mandate through painstaking research, technology development, and question testing. With their belated interference, Trump and Sessions are upending this meticulous process.

- We must protect the census.

Recognizing what's at stake, four lawsuits have been filed challenging this decision. The California State Attorney General filed a lawsuit in federal court on March 26, 2018. The New York Attorney General filed suit on April 3 on behalf of 18 Attorneys General, six cities, and the bipartisan U.S. Conference of Mayors.<sup>xvii</sup> Since then, the State of Colorado,<sup>xviii</sup> the City of Pittsburgh,<sup>xix</sup> the City of Columbus,<sup>xx</sup> and several counties<sup>xxi</sup> have joined the lawsuit. On April 11, a group of individuals from Maryland and Arizona filed a lawsuit in federal court in Maryland to challenge the Trump administration's addition of a citizenship question on the 2020 Census questionnaire. On April 17, the Lawyers' Committee for Civil Rights Under Law filed a lawsuit on behalf of the City of San Jose and the Black Alliance for Just Immigration, a California-based immigrant rights group.

Members of Congress are also weighing in, because you can undo this unfortunate effort to undermine a successful census. In January, Representatives Maloney, Serrano, and Gutiérrez led a coalition of more than 100 colleagues in opposing the addition of a citizenship question to the 2020 Census.<sup>xxii</sup> More recently, Senators Harris, Carper, Peters, and McCaskill called upon the Senate Homeland Security and Government Affairs Committee to question Census Bureau staff and Commerce Secretary Ross on their decision to add the untested citizenship question.<sup>xxiii</sup> Representative Holmes Norton was the first to introduce a bill to prohibit a citizenship/legal status question on the census, and several other bills have been introduced in both chambers, with dozens of cosponsors, to protect a successful census by prohibiting any questions that have not been thoroughly researched and tested in advance of the census, including questions on citizenship and legal status.

While rare, Congress has taken steps to modify topics and question wording after the statutory submissions to Congress, most recently by passing legislation to modify the proposed wording of the race question and the content of the census long form in the 1990 Census. Congress passed legislation in 1988 to restore questions on home heating fuel and other housing characteristics that OMB had proposed to eliminate, and to require the collection of Asian and Pacific Islander subgroup data using 'check-boxes' similar to those used in the 1980 race question. Even though President Reagan pocket-vetoed the legislation, the Census Bureau rightly bowed to the wishes of Congress by modifying the race question and restoring the questions to the long form before finalizing the questionnaires, in line with clear congressional intent.<sup>xxiv</sup> Although congressional approval is not required, lawmakers who disagree with the questions can request that the bureau make appropriate changes or can pass legislation mandating the desired changes.

### **Race and Ethnicity Questions and Census Accuracy**

We also wanted to express our disappointment that the Census Bureau will use separate race and ethnicity questions and will not add a new Middle Eastern and North African (MENA) category in both the 2018 End-to-End Census Test and the 2020 Census, thereby setting aside years of painstaking research, testing, and stakeholder consultation, in the absence of final action by the Office of Management and Budget (OMB) on new Standards for collecting race/ethnicity data. Reverting largely to the 2010 Census race and ethnicity questions for the upcoming census "dress rehearsal" suggests that OMB will not revise the

official standards for collecting and reporting these data, despite recommendations from a federal agency working group to do so.

OMB received more than 8,000 public comments, including comments from The Leadership Conference and 80 organizations,<sup>xxv</sup> supporting proposed changes to the federal policy governing collection and reporting of federal data on race and ethnicity. Census Bureau staff had already recommended using a combined race/ethnicity question and including a MENA category in the 2018 End-to-End Test. However, issuing updated Standards in a timely way was necessary to inform the Census Bureau's final decision on questions for the 2020 Census, and OMB has not yet announced a final decision on revisions to the race and ethnicity Standards, missing its internal deadline of December 2017 in the process.

We call on Congress to investigate why the administration undermined a comprehensive and overdue examination of whether official statistics reflect the full diversity of our rapidly changing population. Congress should not allow the Trump administration's misguided decision to overturn recommendations from expert Census Bureau staff to stand.

## Conclusion

The census is a sacred trust. The goal of an accurate count has been, and should remain, a nonpartisan one. Our democracy depends on it. The Leadership Conference and its member organizations look forward to working with all members of this committee to ensure a cost-effective, secure, and above all, accurate and inclusive census in every one of the nation's communities.

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<sup>i</sup> Several of our coalition members, including NALEO Educational Fund and Asian Americans Advancing Justice-AAJC, SEIU, National Urban League, and NETWORK, have already or intend to submit statements to this committee.

<sup>ii</sup> See Reamer, Andrew. "Counting for Dollars: The Role of the Decennial Census in the Geographic Distribution of Federal Funds." *GW Institute of Public Policy*. Apr. 17, 2018. <https://gwipp.gwu.edu/counting-dollars-2020-role-decennial-census-geographic-distribution-federal-funds>.

<sup>iii</sup> Letter to Chairman Trey Gowdy and Ranking Member Elijah Cummings. April 12, 2018. <https://civilrights.org/civil-human-rights-coalition-letter-ogr-census-citizenship-question/>.

<sup>iv</sup> Former Directors' Letter to The Honorable Wilbur L. Ross. *Published in the Washington Post*. Jan. 26, 2018. [https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ\\_census\\_ques\\_request\\_Former\\_Directors\\_ltr\\_to\\_Ross.pdf](https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf).

<sup>v</sup> See Elliott, Justin. "Wilbur Ross Overruled Career Officials at Census Bureau to Add Citizenship Question." *ProPublica*. Mar. 27, 2018. <https://www.propublica.org/article/wilbur-ross-overruled-career-officials-at-census-bureau-to-add-citizenship-question>.

<sup>vi</sup> The citizenship question is not on the 2018 End-to-End Test questionnaire, as the decision to add the question was made after the End-to-End Test form was finalized.

<sup>vii</sup> See Letter to The Honorable Wilbur Ross. *The U.S. Conference of Mayors*. Feb. 6, 2018. <http://www.usmayors.org/wp-content/uploads/2018/02/20180206-census-letter.pdf>.

<sup>viii</sup> See Former Directors' Letter to The Honorable Wilbur L. Ross. *Published in the Washington Post*. Jan. 26, 2018. [https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ\\_census\\_ques\\_request\\_Former\\_Directors\\_ltr\\_to\\_Ross.pdf](https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf).

<sup>ix</sup> See "Protect the Census: Oppose DOJ Request to Add a Citizenship Question to the 2020 Census." *The Leadership Conference on Civil and Human Rights*. Jan. 10, 2018. <http://civilrightsdocs.info/pdf/policy/letters/2018/doj-citizenship-q-proposal-FINAL.pdf>.

<sup>x</sup> [https://s3.amazonaws.com/s3.faithinpubliclife.org/images/Census\\_sign-on\\_4.9.pdf](https://s3.amazonaws.com/s3.faithinpubliclife.org/images/Census_sign-on_4.9.pdf)

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- <sup>xi</sup> See “Maloney, Serrano, Gutiérrez, 100+ Members Urge Sec. Ross to Reject DOJ’s Misguided Request to Add Citizenship Question to the 2020 Census.” *Office of Representative Carolyn B. Maloney*. Jan. 18, 2018. <https://maloney.house.gov/media-center/press-releases/maloney-serrano-guti-rrez-100-members-urge-sec-ross-to-reject-doj-s>.
- <sup>xii</sup> See Former Directors’ Letter to The Honorable Wilbur L. Ross. *Published in the Washington Post*. Jan. 26, 2018. [https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ\\_census\\_ques\\_request\\_Former\\_Directors\\_ltr\\_to\\_Ross.pdf](https://www.washingtonpost.com/r/2010-2019/WashingtonPost/2018/03/27/Editorial-Opinion/Graphics/DOJ_census_ques_request_Former_Directors_ltr_to_Ross.pdf).
- <sup>xiii</sup> “MEMORANDUM FOR Associate Directorate for Research and Methodology (ADRM).” *Census Bureau Center for Survey Measurement*. Sept. 20, 2017. <https://www2.census.gov/cac/nac/meetings/2017-11/Memo-Regarding-Respondent-Confidentiality-Concerns.pdf>.
- <sup>xiv</sup> See Meyers, Mikelyn. “Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census.” *Census Bureau Center for Survey Measurement*. Nov. 2, 2017. <https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf>.
- <sup>xv</sup> Meyers, Mikelyn. “Respondent Confidentiality Concerns and Possible Effects on Response Rates and Data Quality for the 2020 Census.” *Census Bureau Center for Survey Measurement*. Nov. 2, 2017. Pg. 8. <https://www2.census.gov/cac/nac/meetings/2017-11/Meyers-NAC-Confidentiality-Presentation.pdf>.
- <sup>xvi</sup> *Evenwel v. Abbott*, 136 S. Ct. 1120, 1132, 194 L. Ed. 2d 291 (2016), [https://www.supremecourt.gov/opinions/15pdf/14-940\\_ed9g.pdf](https://www.supremecourt.gov/opinions/15pdf/14-940_ed9g.pdf).
- <sup>xvii</sup> See Complaint for State of New York et al. v. U.S. Dept. of Commerce et al. *U.S. District Court Southern District of New York*. Apr. 3, 2018. <https://ag.ny.gov/sites/default/files/complaint.pdf>.
- <sup>xviii</sup> See Paul, Jesse. “Colorado joins lawsuit to block Trump administration from asking citizenship question on 2020 census.” *The Denver Post*. May 1, 2018. <https://www.denverpost.com/2018/05/01/colorado-donald-trump-census-citizenship-question-lawsuit/>.
- <sup>xix</sup> See Bauder, Bob. “Pittsburgh joins lawsuit challenging citizenship question on 2020 census.” *Tribune-Review*. May 1, 2018. <http://triblive.com/local/alleggheny/13602827-74/pittsburgh-joins-lawsuit-challenging-citizenship-question-on-census-forms>.
- <sup>xx</sup> See Rouan, Rick. “Columbus joins lawsuit to block census citizenship question.” *The Columbus Dispatch*. May 2, 2018. <http://qfm96.com/news/061160-columbus-joins-lawsuit-to-block-census-citizenship-question/>.
- <sup>xxi</sup> For e.g. Monterey County, CA, Cameron County, TX, and Hidalgo County, TX. Los Angeles County also joined a lawsuit initiated by California State Attorney General Xavier Becerra in late March.
- <sup>xxii</sup> See “Maloney, Serrano, Gutiérrez, 100+ Members Urge Sec. Ross to Reject DOJ’s Misguided Request to Add Citizenship Question to the 2020 Census.” *Office of Representative Carolyn B. Maloney*. Jan. 18, 2018. <https://maloney.house.gov/media-center/press-releases/maloney-serrano-guti-rrez-100-members-urge-sec-ross-to-reject-doj-s>.
- <sup>xxiii</sup> See Wang, Hansi Lo. “Democrats Call For Senate Hearing Over 2020 Census And Citizenship Question.” *NPR*. Mar. 30, 2018. <https://www.npr.org/2018/03/30/598123579/democrats-call-for-senate-hearing-over-2020-census-and-citizenship-question>.
- <sup>xxiv</sup> See Anderson, Margo J., Editor in Chief., *Encyclopedia of the U.S. Census*, “Congress and the census,” by Terri Ann Lowenthal, pgs. 88-89 (CQ Press, Washington, DC, 2000).
- <sup>xxv</sup> Letter to Jennifer Park, Office of Management and Budget. April 28, 2017. <http://www.civilrightsdocs.info/pdf/policy/letters/2017/Leadership%20Conference%20OMB%20FRN2-RE%20Standards-Comments-04%2028%202017%20final.pdf>.